

Message Text

CONFIDENTIAL

PAGE 01 USUN N 03795 01 OF 10 172312Z

63

ACTION DLOS-06

INFO OCT-01 IO-13 ISO-00 FEA-01 ACDA-07 AGR-05 AID-05

CEA-01 CEQ-01 CG-00 CIAE-00 CIEP-01 COME-00 DODE-00

DOT-00 EB-07 EPA-01 ERDA-05 FMC-01 TRSE-00 H-02

INR-07 INT-05 JUSE-00 L-03 NSAE-00 NSC-05 NSF-01

OES-06 OMB-01 PA-01 PM-04 PRS-01 SP-02 SS-15 USIA-06

SAL-01 AF-08 ARA-06 EA-07 EUR-12 NEA-10 /158 W

----- 064538

P 172153Z SEP 76

FM USMISSION USUN NY

TO SECSTATE WASHDC PRIORITY 9232

C O N F I D E N T I A L SECTION 1 OF 10 USUN 3795

FROM US DEL LOS

E.O. 11652: GDS

TAGS: PLOS

SUBJ: AUGUST - SEPTEMBER 1976 - LOS CONFERENCE -

CLASSIFIED REPORT

BEGIN SUMMARY:

AS A RESULT OF THIS SESSION, THE CONFERENCE HAS AT
LAST REACHED THE STAGE WHERE MANY DELEGATIONS ARE WEIGHING
THE VENEFITS AND LOSSES OF A TREATY AGAINST NO TREATY.
FOR MOST, THERE ARE POSITIVE AS WELL AS NEGATIVE FACTORS
INVOLVED. MORE IMPORTANTLY, THE MORE "REALISTIC" THE
TREATY BECOMES, THE MORE IT TENDS TO APPROXIMATE LIKELY
DEVELOPMENTS IN THE ABSENCE OF A TREATY, POSITIVE AND
NEGATIVE. RATHER THAN "ACCEPT" THE UNPLEASANE ASPECTS OF
THAT REALITY, GOVERNMENTS MAY NATURALLY PREFER TO LET EVENTS
DEVELOP, AND WHETHER BY LUCK OR WISHFUL THINING, POSSIBLY
AVOID OR LEAVE TO OTHERS THE RESPONISBILITY FOR FACING UP
CONFIDENTIAL

CONFIDENTIAL

PAGE 02 USUN N 03795 01 OF 10 172312Z

TO THOSE REALITIEES. TO THE EXTENT THAT THE CONFERNCE

ATMOSPHERE AAS CREATED SOME DISTORTIONS OF REALITY, THOSE ADVERSELY AFFECTED BY THE DISTORTIONS ARE MORE LIKELY TO PERCEIVE THIS THAN THOSE CAUGHT UP IN THEIR CREATION.

FROM ITS SEPARATE INCEPTIONS IN THE MINDS OF U.S. - SOVIET NEGOTIATORS IN 1967 AND IN UNGA SPEECHES IN 1968, THE CONFERENCE HAS HAD THREE MOTIVE FORCES IN THE MINDS OF MOST STATES:

- 1) TO PROTECT NAVIGATION AND OVERLIGHT FROM CHALLENGES RESULTING FROM COASTAL STATE JURISDICTION
- 2) TO ACHIEVE BROAD COASTAL STATE CONTROL OF LIVING AND NON-LIVING RESOURCES AND ANCILLARY MATTERS
- 3) TO ESTABLISH AN INTERNATIONAL REGIME FOR THE SEABEDS BEYOND COASTAL STATE JURISDICTION, UNDER AN ENTIRELY NEW CONCEPT OF THE COMMON HERITAGE OF MANKIND.

PROTECTION OF NAVIGATION AND OVERFLIGHT REMAINS A MAJOR CONCERN AND MOTIVE FORCE FOR THE NEGOTIATIONS. HOWEVER, THE RELATIVELY EARLY ATTAINMENT OF SOME NAVIGATION OBJECTIVES (E.G., STRAITS), WHILE ESSENTIAL TO ANY EVENTUAL SUCCESSFUL OUTCOME, INEVITABLY TEMPTS THOSE CONCERNED TO ASSUME THE RESULT RATHER THAN VIGOROUSLY SEEKING A COMPREHENSIVE TREATY IN ORDER TO ATTAIN IT. MOREOVER, THE NEGOTIATIONS OVER THE LEGAL STATUS OF THE ECONOMIC ZONE HAVE BROUGHT INTO FOCUS THE FACT THAT THE CO-EXISTENCE OF SUBSTANTIAL COASTAL STATE RIGHTS AND INTERNATIONAL NAVIGATIONAL AND OTHER FREEDOMS IN THE SAME SPACE MAY NECESSITATE SOME DIFFICULT ACCOMMODATIONS IN PRACTICE. BY OPPOSING THE HIGH SEAS STATUS OF THE ECONOMIC ZONE MAY COASTAL STATES ARE SEEKING A LEGAL EDGE TO PROTECT THEM AGAINST WHAT THEY PERCEIVE TO BE THE SUPERIOR STRENGTH OF THE MARITIME POWERS. BY SEEKING HIGH SEAS STATUS FOR THE ECONOMIC ZONE, THE MARITIME POWERS ARE SEEKING TO AVOID POTENTIAL LEGITIMIZATION OF EXPANSIVE COASTAL STATE VIEWS OF THEIR RIGHTS, AND POLITICAL AND PRACTICAL PROBLEMS OF DEALING WITH COASTAL STATE ASSERTIONS IN THIS REGARD. AT LEAST SOME ON EACH SIDE BELIEVE A CONCESSION ON THE ISSUE MAY BE WORSE THAN NO TREATY.

CONFIDENTIAL

CONFIDENTIAL

PAGE 03 USUN N 03795 01 OF 10 172312Z

COASTAL STATE RESOURCE OBJECTIVES HAVE ALL BUT DISAPPEARED AS A MOTIVE FORCE FOR A TREATY. WITH RESPECT TO MINERALS, COASTAL STATES BELIEVE THAT THEY CAN GET AWAY WITH AN ASSERTION THAT THE EXISTING INTERNATIONAL LAW CONCEPT OF THE CONTINENTAL SHELF COVERS THE ENTIRE CONTINENTAL MARGIN, AND THUS ALL POTENTIAL HYDROCARBONS OFF THEIR COAST. FISHERIES WAS THE REAL PROBLEM. THE DECISION BY THE U.S., FOLLOWED BY A DECISION IN PRINCIPLE BY

THE EC, TO ESTABLISH A 200-MILE FISHING ZONE, FOR ALL PRACTICAL PURPOSES, LEGITIMIZES THE SIMILAR ASPIRATIONS OF OTHER COASTAL STATES. THE FACT THAT THE USSR AND JAPAN WILL ACCOMMODATE THEMSELVES IN FACT TO THE U.S. CLAIM MAKES IT IMPOSSIBLE FOR THEM TO RESIST OTHER FISHERIES CLAIMS IN PRINCIPLE. THUS, MOST COASTAL STATES CAN HAVE WHAT THEY WANTED, MOST WITHOUT A TREATY. THIS WAS PERHAPS BEST REFLECTED IN A PRIVATE COMMENT BY A PROMINENT NORWEGIAN PARTICIPANT: "WE ARE STILL INTERESTED IN A TREATY, BUT STAE PRACTICE HAS, OF COURSE, REDUCED SOME OF THAT INTEREST." MOREOVER, COMPLEX NEGOTIATION OF BILATERAL AGREEMENTS PURSUANT TO UNILATEAL 200-MILE CLAIMS IS PREOCCUPYING KEY PERSONNEL WHO HAVE BEEN MAJOR ARCHITECTS OF LOS TREATY DRAFTS IN THE PAST.

AT THE SAME TIME, IT IS CLEAR THAT COASTAL STATES WILL PROBABLY HAVE TO MAKE SEVERAL RESOURCE CONCESSIONS FOR A TREATY: A BINDING IF FLEXIBLE GUARANTEE OF FOREIGN ACCESS TO SURPLUS FISHERIES, SPECIAL RIGHTS OF ACCESS TO FISHERIES FOR THEIR LANDKOCKED AND GEOGRAPHICALLY DISADVANTAGED NEIGHBORS; SOME REVENUE SHARING FROM MINERAL EXPLOITATION OF THE CONTINENTAL MARGIN BEYOND 200 MILES, AND POSSIBLY COMPULSORY DISSPUTE SETTLEMENT PROCEDURES THAT MAY AFFECT FISHERIES MANAGEMENT DECISIONS. THE LATTER THREE IN PARTICULAR MAY BE REGARDED BY SOME COASTAL STATES AS CONFERNCE DISTORTIONS OF REALITY. AT THE SAME TIME, MANY LANDLOCKED AND GEOGRAPHICALLY DISADVANTAGED STATES SEE LITTLE REASON TO "LEGITIMIZE" THE VAST COASTAL STATE RESOURCE GRAB IF THEY DO NOT GET GREATER RIGHTS IN THE TREAY THAN THEY MIGHT ACHIEVE BILATERALLY.

BECAUSE THE NUMBER OF STATES WITH PERCEIVED SIGNIFICANT ECONOMIC INTERESTS IN DEEP SEABEDS MINING IS SMALL (MAJOR CONFIDENTIAL

CONFIDENTIAL

PAGE 04 USUN N 03795 01 OF 10 172312Z

INDUSTRIAL STATES AND LAND-BASED PRODUCERS OF COPPER, NICKEL, COBALT AND MANGANEZE), THE ISSUE HAD TAKEN ON AN IDEOLOGICAL QUALITY FOR THE VAST MAJORITY. (AN ANALOGY CAN BE MADE TO ELCTIONS FIERCELY CONTESTED ON "SOCIAL" ISSUES WHEN ECONOMIC STAKES ARE NOT HIGH).

FOR MOST, THE IDEOLOGY IS A VISION OF A NEW ECONOMIC ORDER WHICH IS NOT DOMINATE BY THE INDUSTRIAL STATES AND MULINATIONAL CORPORATIONS. A NUMBER SINCERELY BELIEVE THAT BECAUSE, AS THEY SEE IT, THE ECONOMIC STAKES IN MANGANESE NODULES ARE NOT OVERWHELMING FOR THE LARGE INDUSTRIAL POWERS, PARTICULARLY SINCE THEY OR THEIR COLSE ALLIES HAVE SUBSTANTIAL NICKEL RESERVES AND THE BIG POWER STAKES IN A TREATY THAT DISCOURAGES COASTAL STATE CHALLENGES TO SHIPPING AND NAVAL AND AIR MOBILITY ARE HIGH, THE

SITUATION IS RIPE FOR A NEW ECONOMIC ORDER EXPERIMENT. THE RSNT AND U.S. FIRMNESS OF THIS SESSION BURST THE BALLOON: THE INDUSTRIAL STATES INSIST ON THE RIGHT TO DOMINATE SEABED MINING (GUARANTEED ACCESS) AND ASSERT AT LEAST NEGATIVE CONTROL OVER ANY REGULATORY BODY (VOTING IN THE COUNCIL. WHETHER PUFFING OR SINCERE, THE REACTION IS REVEALED BY MEXICO'S COMMENT THAT THE U.S. INSISTS ON TAKING IT ALL, DEVELOPING COUNTRIES WILL AT LEAST DENY THE U.S. THE LEGITIMACY OF A TREATY, AND MAKE IT PAY A POLITICAL PRICE.

THE SECRETARY'S INITIATIVE OFFERED AT LEAST PART OF THE IDEOLOGICAL DREAM AN ENTERPRISE THAT WOULD BE PUT INTO BUSINESS AND A "SECOND CHANCE" IN A REVIEW CONFERENCE IN ABOUT 25 YEARS, BUT ONLY IN EXCHANGE FOR A SYSTEM THAT FULLY REFLECTS THE REALITIES OF INDUSTRIALIZED STATE INTERESTS IN ACCESS AND DECISION MAKING. INTERESTS CAN BE COMPROMISED; DIFFERENCES CAN BE SPLIT. BUT COMPROMISING PRINCIPLES MAY BE FAR MORE DIFFICULT WHEN A DEVELOPING COUNTRY CAN POINT TO NO DEFINABLE NATIONAL INTEREST THAT REQUIRES REACHING A COMPROMISE DESPITE SACRIFICE OF OFFICIAL LDC IDEOLOGY. SINCE THE COMMITTEE I NEGOTIATION IS SO HEAVILY IDEOLOGICAL, IT IS VERY FERTILE GROUND FOR PROFESSIONAL LDC EXTREMISTS (E.G., ALGERIAL, PRETENDERS (E.G., MEXICO), AND COUNTRIES TRYING TO ENVELOP

CONFIDENTIAL

NNN

CONFIDENTIAL

PAGE 01 USUN N 03795 02 OF 10 172306Z

63

ACTION DLOS-06

INFO OCT-01 IO-13 ISO-00 FEA-01 ACDA-07 AGR-05 AID-05

CEA-01 CEQ-01 CG-00 CIAE-00 CIEP-01 COME-00 DODE-00

DOT-00 EB-07 EPA-01 ERDA-05 FMC-01 TRSE-00 H-02

INR-07 INT-05 JUSE-00 L-03 NSAE-00 NSC-05 NSF-01

OES-06 OMB-01 PA-01 PM-04 PRS-01 SP-02 SS-15 USIA-06

SAL-01 AF-08 ARA-06 EA-07 EUR-12 NEA-10 /158 W

----- 064475

P 172153Z SEP 76

FM USMISSION USUN NEW YORK

TO SECSTATE WASHDC PRIORITY 9233

C O N F I D E N T I A L SECTION 2 OF 10 USUN 3795

FROM US DEL LOS

THEMSELVES IN LDC MYSTIQUE FOR UNRELATED REASONS (INDIA). IT IS ARGUABLE THAT SOME WHO ARE DISSATISFIED WITH COMMITTEE 2 TEXTS ARE TRYING TO USE COMMITTEE I EITHER FOR LEVERAGE OR TO WRECK THE CONFERENCE (E.G., MANY ARABS DO NOT LIKE VERY BROAD COASTAL STATE JURISDICTION OVER THE CONTINENTAL MARGIN OR THE REQUIREMENT THAT INNOCENT PASSAGE CANNOT BE SUSPENDED IN STRAITS LIKE TIRAN; ALGERIA GETS LITTLE FROM AN ECONOMIC ZONE AND MAY PREFER A MEDITERRANEAN REGIONAL ARRANGEMENT). A FEW MAY BE TRYING TO "PROTECT" THEMSELVES AGAINST UNFORSEEN CONTINGENCIES THAT ARE DIFFICULT TO QUANTIFY (E.G., OIL ON THE DEEP SEABEDS). IT IS POSSIBLE THAT SOME PACIFIC COASTAL STATES MAY PERCEIVE THE OPTION OF EXTENDING AT LEAST SEABEDS JURISDICTION WELL BEYOND 200 MILES, IF THE CONFERENCE COLLAPSES (UNDER THE EXPLOITABILITY CRITERION OF THE CONTINENTAL SHELF CONVENTION); AUSTRALIA SPECIFICALLY MENTIONED THIS POSSIBILITY.

CONFIDENTIAL

CONFIDENTIAL

PAGE 02 USUN N 03795 02 OF 10 172306Z

THE DILEMMA OF COMPARING A TREATY WITH PERCEPTIONS OF FUTURE REALITY IS APPLICABLE TO OTHER ISSUES AS WELL. FOR EXAMPLE, THE EXISTING REALITY IS THAT VIRTUALLY ALL STATES WITH 200 MILE CLAIMS REQUIRE CONSENT FOR SCIENTIFIC RESEARCH; VIRTUALLY ALL SCIENTIFIC RESEARCH PROJECTS WITHIN SUCH CLAIMED AREAS ARE PRECEDED BY A REQUEST FOR CONSENT OR DIPLOMATIC ARRANGEMENT (USUALLY BY INCLUDING IN THE PROJECT ACTIVITIES IN THE TERRITORIAL SEA OR ON THE CONTINENTAL SHELF THAT DO REQUIRE CONSENT UNDER A CONSERVATIVE VIEW OF EXISTING LAW); AND THAT MANY OF THE COASTAL STATES THAT MOST VOCIFEROUSLY DEMAND A RIGHT OF CONSENT CURRENTLY GRANT CONSENT AT LEAST TO U.S. INSTITUTIONS MOST OF THE TIME. STILL, EACH SIDE IS SEEKING TO CODIFY AS MUCH OF ITS JURIDICAL POSITION AS POSSIBLE, PRESUMABLY ON THE GROUNDS THAT THE DIFFERING JURIDICAL POSITIONS ARE AT LEAST IN PART RESPONSIBLE FOR THE DE FACTO ACCOMMODATIONS. A CHARITABLE INTERPRETATION OF THE SOVIET CONCESSION OF A COMPLETE DISCRETIONARY REGIME COUPLED WITH A TACIT CONSENT RULE (CONSENT IS PRESUMED IF NO REPLY IS RECEIVED AFTER A SPECIFIED TIME) IS THAT THEY BELIEVE THIS BEST APPROXIMATES THE CURRENT SITUATION IN WHICH COASTAL STATES DO NOT NORMALLY WISH TO REFUSE CONSENT, AND UNESCORTED SCIENTIFIC RESEARCH VESSELS DO NOT NORMALLY WISH TO CHALLENGE

A COASTAL STATE THAT DOES REFUSE CONSENT.

THUS, EXCEPT FOR A HANDFUL OF STATES THAT MAY CLEARLY GAIN OR LOSE MORE IN SUBSTANCE THAN WOULD OTHERWISE BE THE CASE, MOST STATES ARE FACING A BALANCE IN THE TREATY THAT IS A ROUGH APPROXIMATION OF SUBSTANTIVE GAINS AND LOSSES THAT WOULD OBTAIN WITHOUT A TREATY AS THEY PERCEIVE IT ALTHOUGH THESE MAY BE TRADE-OFFS BETWEEN DIFFERENT INTERESTS. THESE PERCEPTIONS OF LIKELY EVENTS IN THE ABSENCE OF A TREATY MAY BE QUITE WRONG, PARTICULARLY SINCE MANY GOVERNMENTS ARE RELYING ON CONFERENCE PARTICIPANTS WHO ARE PROJECTING REALITY FROM THE STATEMENTS OF DELEGATIONS AND NEGOTIATING ASSUMPTIONS AND THREATS RATHER THAN CLEAR HISTORICAL EXPERIENCE WITH THE VORACIOUSNESS OF STATE PRACTICES, PARTICULARLY COASTAL STATE PRACTICES.

CONFIDENTIAL

CONFIDENTIAL

PAGE 03 USUN N 03795 02 OF 10 172306Z

NONETHELESS, THE ULTIMATE VALUE OF THE TREATY, NOW MORE CLEARLY THAN BEFORE, LIES NOT IN ANY EXTRAORDINARY SUBSTANTIVE WINDFALLS, BUT AS WITH MOST TREATIES, IN THE RELATIVE INCREASE IN STABILITY, CERTAINTY, PREDICTABILITY, AND COMMON PRINCIPLES (AND HOPEFULLY PROCEDURES) FOR NARROWING AND RESOLVING DIFFERENCES. THE "POLITICAL DECISIONS" STATES MUST NOW MAKE ALL ENTAIL THE RELATIVE WEIGHT THEY ATTACH TO THESE ACHIEVEMENTS IN TERMS OF THEIR OCEAN-RELATED INTERESTS, WHETHER POLITICAL, MILITARY, ECONOMIC, ENVIRONMENTAL, OR SCIENTIFIC. END SUMMARY.

PART I

COMMITTEE I

US OBJECTIVES AT THIS SESSION

1. THE UNITED STATES DELEGATION HAD TWO ALTERNATIVE OBJECTIVES TO BE ACHIEVED IN COMMITTEE I DURING THE AUGUST-SEPTEMBER SESSION. THE FIRST WOULD HAVE BEEN TO COMPLETE THE MAJOR SUBSTANTIVE NEGOTIATION OF PART I OF THE TREATY AND TO BE PREPARED TO FINALIZE THE TREATY AT A SUBSEQUENT SESSION. THE ATTAINMENT OF THIS OBJECTIVE WOULD HAVE REQUIRED A VIRTUAL ENDORSEMENT BY THE COMMITTEE OF THOSE PROVISIONS OF THE REVISED SNT PRIVATELY NEGOTIATED AT THE SPRING SESSION. THIS PROVED IMPOSSIBLE.

2. THE SECOND ALTERNATIVE OBJECTIVE WAS TO PRESERVE THE AGREEMENTS REACHED IN THE REVISED SNT, THE BULK OF WHICH IS ACCEPTABLE TO THE US, IN THE EVENT THAT IT WAS NOT POSSIBLE TO CONTINUE THE NEGOTIATING MOMENTUM REACHED

AT THE LAST SESSION AND CONCLUDE THE COMMITTEE I
NEGOTIATION. THIS OBJECTIVE WAS ACHIEVED.

3. DURING THE LAST SESSION, WE NEGOTIATED IN PRIVATE
WITH THE SECRET BRAZIL GROUP, WHICH CONTAINED DEVELOPING
COUNTRY LEADERS WHO HAD COME TO PERCEIVE A NATIONAL
INTEREST IN EARLY CONCLUSION OF A LAW OF THE SEA TREATY.
AT THE END, WHEN IT BECAME OBVIOUS THAT CHAIRMAN PAUL
ENGO WAS TO ISSUE A NEW SNT BASED ON THE OUTCOME OF
PRIVATE NEGOTIATIONS, THE GROUP OF 77 REACTED STRONGLY
CONFIDENTIAL

CONFIDENTIAL

PAGE 04 USUN N 03795 02 OF 10 172306Z

AND THERE WAS SOME CHANCE THAT THE REVISED SNT WOULD BE
TOTALLY REJECTED. THUS, THOSE MODERATE LDC LEADERS WHO
HAD NEGOTIATED WITH US IN THE SECRET BRAZIL GROUP CAME
TO THIS SESSION SOMEWHAT DISCREDITED. THE EXTREMIST
LEADERS IN THE 77, WHO HAD ORIGINALLY ATTACKED THE NEW
TEXT (MEXICO, INDIA AND THE ARAB STATES), CONTINUE TO
EXERCISE CONSIDERABLE INFLUENCE IN THE DELIBERATIONS
OF THE GROUP OF 77.

4. IF THE MODERATES HAD BEEN CAPABLE OF RESUMING THEIR
PAST LEADERSHIP ROLE, IT MIGHT HAVE BEEN POSSIBLE TO
HAVE COMPLETED THE MAJOR SUBSTANTIVE NEGOTIATION IN
COMMITTEE I. HOWEVER, THEY DID NOT INITIALLY, AND THE
GROUP OF 77 BEGAN SYSTEMATICALLY TO REOPEN THE
PRINCIPAL PROVISIONS OF THE RSNT. WE USED STALLING
TACTICS TO PREVENT THE 77'S BRINGING INTO THE COMMITTEE

CONFIDENTIAL

NNN

CONFIDENTIAL

PAGE 01 USUN N 03795 03 OF 10 172334Z

63
ACTION DLOS-06

INFO OCT-01 IO-13 ISO-00 FEA-01 ACDA-07 AGR-05 AID-05

CEA-01 CEQ-01 CG-00 CIAE-00 CIEP-01 COME-00 DODE-00

DOT-00 EB-07 EPA-01 ERDA-05 FMC-01 TRSE-00 H-02

INR-07 INT-05 JUSE-00 L-03 NSAE-00 NSC-05 NSF-01

OES-06 OMB-01 PA-01 PM-04 PRS-01 SP-02 SS-15 USIA-06

SAL-01 AF-08 ARA-06 EA-07 EUR-12 NEA-10 /158 W

----- 065298

P 172153Z SEP 76

FM USMISSION USUN NEW YORK

TO SECSTATE WASHDC PRIORITY 9234

C O N F I D E N T I A L SECTION 3 OF 10 USUN 3795

FROM US DEL LOS

THEIR NEW POSITIONS ON ARTICLES WE CONSIDERED RESOLVED
IN THE RSNT.

5. AS A FORMAL MATTER, WE WERE SUCCESSFUL IN PRESERVING
THE RSNT, BUT THIS MUST BE QUALIFIED SINCE THE GROUP OF
77 HAS NOW DEVELOPED CONSENSUS, HARDLINE POSITIONS ON
MOST OF THE PRINCIPAL ISSUES IN THE NEGOTIATION -- THE
SYSTEM OF EXPLOITATION, THE POWERS OF THE ASSEMBLY AND
COUNCIL AND THEIR VOTING PROCEDURES AND RELATIONSHIP,
AND ARTICLE 9 (PRODUCTION CONTROLS). THE SEPTEMBER 1-2
VISIT BY THE SECRETARY PLAYED AN IMPORTANT ROLE IN
AVOIDING THE ADVERSE REVISION OF THE RSNT ON COMMITTEE I
ISSUES DUE TO THE FIRMNESS OF HIS STATEMENTS ON ACCESS AND
HIS INITIATIVES ON FINANCING THE ENTERPRISE AND THE REVIEW
CONCEPT.

DEVELOPMENTS IN COMMITTEE I AT THIS SESSION

CONFIDENTIAL

CONFIDENTIAL

PAGE 02 USUN N 03795 03 OF 10 172334Z

6. THE WORKING GROUP OF COMMITTEE I DISCUSSED THE SYSTEM
OF EXPLOITATION EXCLUSIVELY AND, EVEN THEN, DEALT ONLY
WITH THE QUESTION OF STATE AND PRIVATE PARTY ACCESS.

7. MANY LDCS WERE DISSATISFIED WITH THE PARALLEL SYSTEM
OF EXPLOITATION IN THE RSNT. SOME SEEMED CONCERNED ABOUT
THE INABILITY OF THE ENTERPRISE TO COMPETE ON AN EQUAL
FOOTING WITH STATES. OTHERS OBJECTED TO QUOTE AUTOMA-
TICALLY UNQUOTE OF ACCESS FOR STATES AND PRIVATE PARTIES.
IN ADDITION, CERTAIN EXTREMISTS (ALGERIA AND TANZANIA)
CONTINUED TO OPPOSE THE VERY CONCEPT OF PARALLELISM
AND MAINTAINED THE ORIGINAL GROUP OF 77 POSITION FOR
EXCLUSIVE OPERATION BY THE ENTERPRISE.

8. BECAUSE THE GROUP OF 77 COULD NOT AGREE ON THE
ACCEPTABILITY OF PARALLELISM IN PRINCIPLE, THEIR

PROPOSALS CONCENTRATED ON THE STATES AND PRIVATE PARTY SIDE, AND THE QUESTION OF BUILDING UP THE ENTERPRISE SIDE OF THE SYSTEM WAS AVOIDED. THEIR INFORMAL AMENDMENTS VIRTUALLY DESTROYED ANY RIGHT OF STATES AND PRIVATE PARTIES TO MINE THE DEEP SEABED AND SUBJECTED OPERATIONS BY SUCH ENTITIES TO THE COMPLETE DISCRETIONARY CONTROL OF THE AUTHORITY. THE INDUSTRIALIZED COUNTRY RESPONSE TO THESE GROUP OF 77 ARTICLES WAS UNIFIED AND FIRM: GUARANTEED ACCESS WAS ESSENTIAL TO ANY COMPROMISE. THE US AND USSR INTRODUCED COUNTER-PROPOSALS ON ACCESS.

9. THE DEBATE ON THE SYSTEM OF EXPLOITATION WAS CARRIED OUT ON TWO LEVELS, THE FIRST BEING THE ACCEPTABILITY OF THE PARALLEL SYSTEM IN PRINCIPLE. THE SECOND CONCERNED THE POTENTIAL FOR OBJECTIVE CRITERIA FOR GRANTING ACCESS TO STATES AND PRIVATE COMPANIES, WHICH WOULD LIMIT THE AUTHORITY'S DISCRETION TO REFUSE ARBITRARILY TO CONCLUDE A CONTRACT WITH A QUALIFIED APPLICANT.

10. OUR INTERPRETATION OF THESE DISCUSSIONS IS THAT MANY LDCS WOULD BE PREPARED TO ACCEPT SOME LIMITATIONS ON THE AUTHORITY'S DISCRETION OVER STATE ACCESS PURSUANT TO TREATY CRITERIA. WHILE THE LDCS COULD PROBABLY AGREE TO INCLUSION OF CRITERIA, IT IS VERY DOUBTFUL THAT THEY WOULD AGREE TO SPECIFIC, DETAILED AND OBJECTIVE CRITERIA

CONFIDENTIAL

PAGE 03 USUN N 03795 03 OF 10 172334Z

WHICH WE SEEK. THIS POINT WAS MADE REPEATEDLY BY THE MODERATES IN PUBLIC, IN PRIVATE AND DIRECTLY TO SECRETARY KISSINGER DURING HIS SECOND VISIT.

11. PROVISIONS ON THE ASSEMBLY AND COUNCIL WERE NOT DISCUSSED IN THE COMMITTEE, BUT THE GROUP OF 77 FORMULATED CONSENSUS POSITIONS IN THE RELEVANT ARTICLES WHICH REMOVE MOST OF THE PROCEDURAL PROTECTIONS FOR INDUSTRIALIZED COUNTRIES IN THE RSNT PROVISIONS ON ASSEMBLY VOTING AND POWERS AND MAKE THE ASSEMBLY THE POLICY-MAKING ORGAN IN THE AUTHORITY WITH A CIRCUMSCRIBED ROLE FOR THE COUNCIL.

12. THE U.S. INFORMALLY CIRCULATED A NEW PROPOSAL ON COUNCIL VOTING AND COMPOSITION TOWARD THE END OF THE SESSION, WHICH PROVIDES FOR WEIGHTED VOTING WITH VARYING MAJORITIES ON ALL SUBSTANTIVE ISSUES. THE BASIC APPROACH IS GENERALLY SUPPORTED BY FRANCE, THE USSR, AND JAPAN, ALTHOUGH THE UK CONTINUES TO OPPOSE IT ON THE GROUND THAT IT IS FAR TOO EXTREME AND WILL BE PERCEIVED AS QUOTE CONFERENCE-WRECKING. UNQUOTE

13. WHILE NO DISCUSSION OF ARTICLE 9 OCCURRED IN THE COMMITTEE, THE GROUP OF 77 DID INTERNALLY APPROVE A

REVISED TEXT WHICH TRACKS CANADA'S POSITION FOR MAKING THE INTERIM LIMIT A REAL ONE, AND THE ARABS' POSITION THAT ARTICLE 9 SHOULD COVER HYDROCARBONS. IN ADDITION, THE DRAFT INCLUDES MANY OTHER OBJECTABLE FEATURES.

14. FINALLY, THE STATE QUOTA PROBLEM WAS NOT FOCUSED ON IN COMMITTEE I, AND THE GROUP OF FIVE DEVOTED NO TIME AT THIS SESSION TO SUBSTANTIVE NEGOTIATION ON THIS ISSUE. INDIA AND MEXICO, HOWEVER, HAVE BECOME QUOTE ADVOCATES AND WILL PROBABLY WORK TO GAIN LDC SUPPORT.

15. THE PUBLIC REACTION TO THE SECRETARY'S PROPOSALS BY LDCS WAS CIRCUMSPECT. THEY HAVE NOT DISCUSSED THE COMPROMISE EITHER IN PUBLIC OR IN THE GROUP OF 77 AND HAVE ESSENTIALLY DEFERRED THE ISSUE UNTIL THE NEXT SESSION. PRIVATE COMMENTS ON THE SECRETARY'S COMPROMISE PACKAGE DIFFER WIDELY:

CONFIDENTIAL

CONFIDENTIAL

PAGE 04 USUN N 03795 03 OF 10 172334Z

-- A FEW LDCS HAVE INDICATED UNQUALIFIED INTEREST.

--SOME HAVE IMPLIED INTEREST (PARTICULARLY AFRICANS) BUT REITERATE THAT GUARANTEED ACCESS AS THE US DEFINES IT IS UNACCEPTABLE; THE AUTHORITY MUST HAVE SOME LATITUDE, PERHAPS CIRCUMSCRIBED, TO NEGOTIATE CONTRACTS.

--SOME (PRIMARILY ARABS) REJECT THE PROPOSAL BECAUSE THEY DO NOT ACCEPT THE PARALLEL SYSTEM IN PRINCIPLE.

--NIGERIA HAS MADE A COUNTER-PROPOSAL TO THE US THAT PROVIDES FOR A SINGLE SYSTEM OF EQUITY JOINT VENTURES WHICH HAS BEEN OPPOSED WITHIN THE GROUP OF 77.

--INDIA HAS MADE A COUNTER-PROPOSAL TO OTHER LDCS THAT INVOLVES COMPULSORY ROTATION OF ENTERPRISE AND OTHER CONTRACTS.

16. ON THE LAST DAY OF THE CONFERENCE, COMMITTEE I CHAIRMAN PAUL ENGO PRESENTED A LENGTHY REPORT, IN WHICH HE MADE SEVERAL SUBSTANTIVE AND PROCEDURAL SUGGESTIONS AND DISCUSSED SECRETARY KISSINGER'S PROPOSALS ON COMMITTEE I IN DETAIL. HE DESCRIBED THE SECRETARY'S PROPOSALS ON FINANCING THE ENTERPRISE AND TRANSFER OF TECHNOLOGY AS "EXTREMELY HELPFUL" AND THAT THEY "DESERVE THE MOST SERIOUS CONSIDERATION." ENGO SAID THE SECRETARY'S PROPOSAL FOR A PERIODIC REVIEW CONFERENCE WAS ALSO HELPFUL IN ITS ATTEMPT TO FIND A WAY OF ALLAYING THE FEARS OF A PERMANENT IMPOSITION ON THE INTERNATIONAL COMMUNITY OF A SYSTEM OF EXPLOITATION THAT MIGHT PROVE

TO BE UNSUITABLE IN THE EARLIER YEARS OF ITS EXISTENCE.

17. ENGO STATED THERE WERE SEVERAL BASIC AND HIGHLY POLITICAL QUESTIONS THAT WOULD HAVE TO BE ANSWERED BEFORE ANY ACTUAL DRAFTING OF A COMPROMISE TEXT COULD BE UNDERTAKEN. THESE QUESTIONS SHOULD BE ANSWERED AT THE HIGHEST POLITICAL LEVEL AND A DECISION MADE WITHIN THE FIRST WEEK OR TWO OF THE NEXT SESSION.

18. IN EFFECT ENGO PROPOSED A THREE-PART PACKAGE WHICH INCLUDED (A) A TREATY PROVISION THAT WOULD
CONFIDENTIAL

CONFIDENTIAL

PAGE 05 USUN N 03795 03 OF 10 172334Z

GIVE AS THE BASIC AND OVERRIDING OBJECTIVE OF THE AUTHORITY THE EXPLOITATION OF SEABED RESOURCES TO MEET WORLD DEMAND IN ORDER TO RESPOND TO THE DESIRE OF INDUSTRIALIZED COUNTRIES AND MANY DEVELOPING COUNTRIES

ADP776

CONFIDENTIAL

PAGE 01 USUN N 03795 04 OF 10 172335Z

63

ACTION DLOS-06

INFO OCT-01 IO-13 ISO-00 FEA-01 ACDA-07 AGR-05 AID-05

CEA-01 CEQ-01 CG-00 CIAE-00 CIEP-01 COME-00 DODE-00

DOT-00 EB-07 EPA-01 ERDA-05 FMC-01 TRSE-00 H-02

INR-07 INT-05 JUSE-00 L-03 NSAE-00 NSC-05 NSF-01

OES-06 OMB-01 PA-01 PM-04 PRS-01 SP-02 SS-15 USIA-06

SAL-01 AF-08 ARA-06 EA-07 EUR-12 NEA-10 /158 W

----- 065355

P 172153Z SEP 76

FM USMISSION USUN NY

TO SECSTATE WASHDC PRIORITY 9235

C O N F I D E N T I A L SECTION 4 OF 10 USUN 3795

FROM US DEL LOS

TO INCREASE THE AVAILABILITY OF INEXPENSIVE RAW MATERIALS (B) A REVIEW CONFERENCE TO MODIFY AN INTERIM ACCESS SYSTEM AND ESTABLISH A PERMANENT SYSTEM; (C) GIVE TO THE AUTHORITY, AS REPRESENTED BY THE ENTERPRISE, A TRUE AND MEANINGFUL ROLE IN THE EXPLOITATION OF THE AREA.

19. THE DELEGATION HAS NOT HAD AN OPPORTUNITY TO ANALYZE ENGO'S FINAL REPORT, BUT ITS TONE WAS POSITIVE AND CONSTRUCTIVE. PRELIMINARY REACTIONS TO IT FROM THE DEVELOPING COUNTRY LANDBASED PRODUCERS AND THE USUAL HARDLINERS HAS BEEN UNFAVORABLE. THE FORMER BECAUSE IT RECOMMENDS AN UNBRIDLED PRO-DEVELOPMENT POLICY AND THE LATTER BECAUSE IT DOES NOT EVEN PAY LIP SERVICE TO THE EXCLUSIVE MONOPLOY ENTERPRISE CONCEPT.

IMPLICATIONS FOR FUTURE NEGOTIATIONS

20. WE CANNOT ASSESS WHETHER THE DIFFICULTIES IN
CONFIDENTIAL
CONFIDENTIAL

PAGE 02 USUN N 03795 04 OF 10 172335Z

COMMITTEE I THIS SESSION EVIDENCE AN UNBRIDGABLE SUBSTANTIVE GAP, A TEMPORARY RETROGRESSION IN OUR EFFORT, OR SIMPLY A NECESSARY PHASE FOR THE GRUP OF 77 TO LET OFF STEAM. WE HAVE SUCCEEDED IN KEEPING A GENERALLY FAVORABLE RSNT INTACT, BUT KNOWN THAT THE GROUP OF 77 HAS DEVELOPED EXTREME POSITIONS ON ALL THE KEY ISSUES WHICH WILL FORM THE PARAMETERS OF FUTURE NEGOTIATIONS. EVEN IF THE NEXT SESSION PRODUCED AN IMPROVED ATMOSPHERE, CONCLUSION OF THE NEGOTIATION COULD WELL REQUIRE THE US TO AGREE TO COMPROMISES BETWEEN THE RSNT (WHICH WE ALREADY BELIEVE TO BE NOT FULLY IN THE BALL-PARK) AND THE NEW GROUP OF 77 POSITIONS ON THE SYSTEM OF EXPLOITATION, PRODUCTION CONTROLS AND THE ASSEMBLY ANC COUNCIL. YET, BECAUSE THIS SESSION WAS SO UNPRODUCTIVE, WE DO NOT KNOW HOW MUCH FLEXIBILITY MIFHT EXIST AMONG MOST LDCS AND THEREFORE HOW CLOSE TO THE RSNT FUTURE NEGOTIATED COMPROMISES WOULD COME.

21. IF THE CURRENT LDC POSITIONS ARE MODERATED DURING THE INTERSESSIONAL PERIOD, ANY MEMBERS OF THE GROUP OF 77 WHO TRULY SEEK AGREEMENT MAY BE ABLE TO AVOID BEING PARALYZED BY THEIR OWN WRITTEN PROPOSALS AT THE NEXT SESSION. ONE WAY OF HELPING THEM TO FIND A WAY OUT OF THIS STRAIT-JACKET, IF THEY SO DESIRE, WOULD BE FIRM BUT GENTLE RESISTANCE FROM THEUINDUSTRIALIZED COUTRIES. UNDER THESE ASSUMPTIONS, LDCS MIGHT BE FURTHER ENCOURAGED TO MAKE REQUISITE COMPROMISES IF THEIS RESISTANCE WERE COUPLED SOMEHOW WITH THE PERCEPTION THAT TIME WAS RUNNING OUT FOR THE NEGOTIATION. SUCH A PERCEPTION MAY IN FACT BE NECESSARY IF WE ARE TO AVOID ANOTHER STALEMATED SESSION SIMILAR TO THIS ONE. ON THE OTHER HAND, THIS RESERVE OF LDC MODERATION DESIRING AGREEMENT MAY NOT GENUINELY EXIST, IN WHICH CASE THE NEXT SESSION WILL PRODUCE NO RESULTS, IRRESPECTIVE OF OUR STRATEGY.

22. GIVENTHIS POTENTIAL, HOWEVER, ONE FACTOR WHICH

COULD BE CRUCIAL AT THIS POINT MAY BE THE DEVELOPMENT
OF A LONG-TERM SYSTEMATIC STRATEGY WHICH SHOULD INCLUDE
REVIEW OF OUR DOMESTIC POLICY, CLOSE COORDINATION WITH
CONGRESS, AND INTENSE INTERSESSIONAL NEGOTIATION AT
BOTH THE BILATERAL AND MULTI-LATERAL LEVELS. THE TIMING
CONFIDENTIAL
CONFIDENTIAL

PAGE 03 USUN N 03795 04 OF 10 172335Z

OF OUR POLICY DECISIONS AND NEGOTIATING EFFORTS IN THIS
PERIOD WILL CONTRIBUTE SUBSTANTIALY TO THE SUCCESS OR
FAILURE OF THE NEXT SESSION OF THE CONFERENCE.

POSSIBLE EXPLANATION OF THE DEVELOPMENT IN COMMITTEE I

23. THE COURSE OF THE COMMITTEE I NEGOTIATIONS THIS
SESSION APPEAR TO HAVE BEEN CONTROLLED BY A NUMBER OF
ADVERSE FACTORS. WE ARE UNABLE RELIABLY TO ANSWER THE
THE QUESTION WHY THESE FACTORS FOUND SUCH FERTILE
GROUND AMONG THE VAST MAJORITY OF THE DEVELOPING COUNTRIES
AND WHY THEY WERE PERMITTED TO DICTATE THE OUTCOME OF
THE SESSION. IN SOME CASES, THE UNDERLYING CAUSES OF
THESE FACTORS MAY BE TEMPORARY IN CHARACTER; IN OTHERS,
THEY MAY BE ENDEMIC BUT SUSCEPTIBLE TO CONTROL; IN STILL
OTHERS, THESE CAUSES MAY ARISE FROM FUNDAMENTAL PROBLEMS.

24. FACTORS WHICH MAY ARISE FROM TEMPORARY PROBLEMS
INCLUDE:

-- THE ADVERSE GROUP OF 77 REACTION TO THE PROVISIONS
OF THE RSNT AND THE MANNER IN WHICH IT WAS PREPARED;

-- THE ABSENCE OF EFFECTIVE LEADERSHIP IN COMMITTEE I,
WHICH MADE IT LITERALLY IMPOSSIBLE FOR THE COMMITTEE
TO ACCOMPLISH ANYTHING MORE THAN A SPINNING OF ITS
WHEELS FOR THE ENTIRE COURSE OF THE SESSION. SIMILARLY,
THE INABILITY OF PAST LDC LEADERS (THOSE MEMBERS OF
THE SECRET BRAZIL GROUP) TO CONTROL THE GROUP OF 77
MADE IT POSSIBLE FOR THE EXTREMISTS TO GOVERN THE
GROUP OF 77'S ACTIONS. IF IS NOT INCONCEIVABLE THAT
THE REINSTATEMENT OF MORE COMPETENT LEADERSHIP MIGHT
MAKE A SIGNIFICANT DIFFERENCE IN THE RATE OF PROGRESS
AT THE NEXT SESSION.

-- ALSO, THIS SESSION'S PROCEDURAL EMPHASIS ON ALLOWING
THE GROUP OF 77 TIME TO MEET SEPARATELY PERMITTED IT
TO RETAIN ITS COHESIVENESS AND TO DEVELOP CONSENSUS
POSITIONS ON PRINCIPAL ISSUES. IN THE PAST, WHEN
COMMITTEE I HAS MOVED RAPIDLY WITH NO TIME FOR GROUP
OF 77 CONSULTATION, MODERATE LDCS HAVE BROKEN RANKS
CONFIDENTIAL
CONFIDENTIAL

PAGE 04 USUN N 03795 04 OF 10 172335Z

WITH EXTREMIST IDEOLOGY.

-- A PERSISTENT BELIEF THAT US POSITIONS IN COMMITTEE I WOULD BE MORE FORTHCOMING IN THE EVENT OF A DEMOCRATIC ADMINISTRATION, COUPLED WITH A CALUCLATED ASSESSMENT THAT UNILATERAL ACTION BY OUR CONGRESS WAS IMPOSSIBLE BEFORE THE NEXT SESSION COULD BE CONVENED.

WE DO NOT KNOW WHETHER THESE PROBLEMS ARE IN FACT TEMPORARY ONES THAT AROSE FROM UNIQUE COMBINATIONS OF EVENTS AT THIS SESSION. WE HVE EXPERIENCED SOME OF THEM AS PAST SESSIONS OF COMMITTEE I AND HAVE NO CERTAIN BASIS FOR PREDICTING THAT THEY WILL NOT RE-EMERGE IN SUBSEQUENT NEGOTIATIONS.

25. FACTORS WHICH MAY ARISE FROM DEEP-ROOTED PROBLEMS WHICH MAY WELL AFFECT FUTURE NEGOTIATIONS INCLUDE:

-- THERE COULD BE A LACK OF LDC INTEREST IN PRESERVING THE MOMENTUM OF THE NEGOTIATION. THIS COULD RESULT FROM A BELIEF THAT A TREATY ON COMMITTEES II AND III MATTERS IS NOT NECESSARY TO PROTECT THE INTERESTS OF COASTAL STATES AND THAT LDC COMMITTEE I INTERESTS SHOULD NOT BE SACRIFICED IN A HURRIED EFFORT TO PRESERVE THE CHANCE OF CONCLUDING A COMPREHENSIVE TREATY (A BELIEF THAT PERHAPS HAS ALWAYS BEEN PRESENT OR PERHAPS HAS BEEN STRENGTHENED BY THE ENACTMENT OF THE 200-MILE FISHERIES LAW). ALTERNATIVELY, THERE IS SOME POSSIBILITY THAT LDC COASTA STATES, SUCH

CONFIDENTIAL

NNN

CONFIDENTIAL

PAGE 01 USUN N 03795 05 OF 10 180001Z

63

ACTION DLOS-06

INFO OCT-01 IO-13 ISO-00 FEA-01 ACDA-07 AGR-05 AID-05

CEA-01 CEQ-01 CG-00 CIAE-00 CIEP-01 COME-00 DODE-00

DOT-00 EB-07 EPA-01 ERDA-05 FMC-01 TRSE-00 H-02

INR-07 INT-05 JUSE-00 L-03 NSAE-00 NSC-05 NSF-01

OES-06 OMB-01 PA-01 PM-04 PRS-01 SP-02 SS-15 USIA-06

SAL-01 AF-08 ARA-06 EA-07 EUR-12 NEA-10 /158 W

----- 066630

P 172153Z SEP 76

FM USMISSION USUN NY

TO SECSTATE WASHDC PRIORITY 9236

C O N F I D E N T I A L SECTION 5 OF 10 USUN 3795

FROM US LOS DEL

AS MEXICO ARE USING HARDLINE POSITIONS IN
COMMITTEE I AS BARGAINING TACTICS TO PRESSURE US
CONCESSIONS ON ECONOMIC ZONE ISSUES IN COMMITTEES II AND
III. CLEARLY, A RELATIONSHIP HAS ALWAYS EXISTED BETWEEN
PROGRESS IN COMMITTEES II AND III AND COMMITTEE I, BUT
IT IS IMPOSSIBLE TO PREDICT WHICH IS GOVERNING WHICH.
AND INDEED IT DIFFERS FROM COUNTRY TO COUNTRY.

-- AN LDC WILLINGNESS TO DELAY COULD ALSO ARISE FROM A
BASIC CONVICTION THAT THEY CAN AFFORD TO WAIT OUT
THE UNITED STATES IN THIS NEGOTIATION BECAUSE WE WILL
NEVER ADOPT UNILATERAL STEPS TO PROTECT OUR DEEP SEABED
INTERESTS. WE UNDERSTAND THIS VIEW WAS WIDELY ADVOCATED
AT THE SELECT LDC MEETING CONVENED BY JAGOTA (INDIA)
IN REACTION TO THE KISSINGER VISIT. IF THIS CONVICTION
IS WIDELY SHARED AMONG THIRD WORLD NATIONS, THE PERCEPTION
MUST BE THAT THERE IS NO ADVANTAGE TO THE GROUP OF 77'S
MAKING COMPROMISES IN COMMITTEE I AND THAT TIME IS
CONFIDENTIAL

CONFIDENTIAL

PAGE 02 USUN N 03795 05 OF 10 180001Z

CLEARLY ON THEIR SIDE AND WORKING AGAINST THE INTEREDTS
OF THE UNITED STATES.

-- PROGRESS MAY HAVE BEEN ELUSIVE AT THIS SESSION
SIMPLY BECAUSE OF GROUP DYNAMICS AND PSYCHOLOGY
AFFECTING THE GROUP OF 77. IT MAY BE INHERENT IN
MULTILATERAL NEGOTIATIONS AT THIS TIME THAT THE
GROUP OF 77 RESPONDS TO MOB PSYCHOLOGY AND THAT
EFFECTIV NEGOTIATION MANAGEMENT IS UNACHIEVEABLE
EITHER BECAUSE OF SHEER SIZE OR IDEOLOGICAL
DISPARITIES.

-- WE MAY BE WITNESSING AT THIS CONFERENCE THE EFFECTS OF
RECENT LDC SOLIDARITY AND SUCCESSES GAINED IN OTHER
INTERNATIONAL ECONOMIC FORUMS SUCH AS UNCTAD IV. THE
LEADERSHIP OF THE GRUP OF 7 IS MAKING VIGOROUS EFFORTS
TO CONSOLIDATE THE GROUP AT A VERY HIGH LEVEL ATAINST

ANY LOSS OF SOLIDARITY. TO THIS END THE G-77 IS CURRENTLY HOLDING A MINISTERIAL-LEVEL CONFERENCE IN MEXICO CITY, ONE OF WHOSE LIKELY OUTCOMES WILL BE ENDORSEMENT OF A SUMMIT-LEVEL G-77 CONFERENCE NEXT YEAR TO PUT CHIEF EXECUTIVE IMPRIMATUR ON FUTURE G-77 MINISTERIAL-LEVEL DECISIONS.

-- WE HAVE ALSO NOTED IN THE PAST THEA THE EXTREMISTS LEADERSHIP IN THE GROUP OF 77 IS FLUID AND THAT CO-OPTING ONE PARTICULARLY EFFECTIVE LDC SERVES NO PURPOSE, SINCE OTHER ACTIVITISTS WILL TAKE ITS PLACE. THIS PHENOMENON IS EVIDENCED BY THE LOSS OF INFLUENCE BY LDC MEMBERS OF THE SECRET BRAZIL GROUP AT THE BEGINNING OF THE SESSION.

IT IS PERHAPS UNWARRANTED TO LABEL THOSE LDCS WHICH CAUSED DIFFICULTY THIS ESSION AND OPPOSED THE RSNT AS EXTREMISTS. IN FACT, THEY ARE ESPOUSING THE MAINSTREAM OF LDC ECONOMIC IDEOLOGY IN INTERNATIONAL FORA. THE REAL DISTINCTION AMONG THE MEMBERS OF THE GROUP OF 77 CONTINUES TO BE THEIR RESPECTIVE WILLINGNESS TO SACRIFICE IDEOLOGICAL PRINCEPES IN AN ATTEMPT TO ACHIEVE A TREATY OF PRACTICAL VALUE. WHAT WE ARE UNABLE TO ASSESS IS THE STRENGTH OF LDC COMMITMENT TO CONFIDENTIAL

CONFIDENTIAL

PAGE 03 USUN N 03795 05 OF 10 180001Z

CONCLUDE A TREATY AND WHETHER THE POSITIONS TAKEN BY THE GROUP OF 77 AT THIS SESSION ARE REPRESENTATIVE OF A GENERAL SUBSTANTIVE SHIFT IN THEIR VIEWS. IF THE COMMITMENT DOES EXIST AND NO FUNDAMENTAL SUBSTANTIVE CHANGE HAS OCCURRED, IT MAY BE POSSIBLE TO DEAL WITH AT LEAST SOME OF THE NUMEROUS PROBLEMS LISTED ABOVE, ANY OF WHICH COULD BE CONTROLLING FACTORRS IN FUTURE WORK OF COMMITTEE I.

COMMITTEE TWO

PROCEDURES

PROCEDURES ADOPTED BY THE COMMITTEE WERE A REFLECTION OF THE VIEW OF CHAIRMAN AGULAR (VENEZUELA), THAT AT THIS STAGE OF THE CONFERENCE, WORK ON "MINOR" ISSUES SHOULD BE DEFERRED SO THAT "PRIORITY" ISSUES COULD BE ATTACKED. PRIORITY ISSUES WERE DEFINED AS THOSE AFFECTING THE GREATEST NUMBER OF INTERESTED STATES. THE INTIIAL LIST INCLUDED THE JURIDICAL (HIGH SEAS) STATUS OF THE ECONOMIC ZONE, ACCESS BY LANDLOCKED STATES TO THE SEA, ACCESS BY LANDLOCKED AND GEOGRAPHICALLY DISADVANTAGED STATES (LL/GDS) TO RESOURCES OF ECONOMIC ZONES OF THE REGION, AND THE DEFINITION OF THE

CONTINENTAL MARGIN AND REVEUNE SHARING. LATER, STRAITS AND DELIMITATION BETWEEN OPPOSITE AND ADJACENT STATES WERE ADDED.

ISSUES WERE FIRST REFERRED TO OPEN-ENDED NEGOTIATING GROUPS (NG). SUBSEQUENTLY, SMALL GROUPS (SG) OF STATES, INVITED BY THE CHAIRMAN, WERE FORMED TO DEAL WITH THE JURIDICAL STATUS OF THE ZONE, THE CONTINENTAL MARGIN, ACCESS TO THE SEA AND DELIMITATION BETWEEN OPPOSITE AND ADJACENT STATES. PRIVATE CONSULTATIONS CONTINUED AMONG GROUPS ON SELECTED ISSUES. A NEGOTIATING GROUP WAS FORMED OUTSIDE THE COMMITTEE CONFERENCE STRUCTURE TO ACT AS A CONTACT GROUP BETWEEN THE COASTAL STATES AND LL/GDS ON THE RESOURCE ISSUE.

THE HIGH SEAS STATUS OF THE ECONOMIC ZONE

CONFIDENTIAL

CONFIDENTIAL

PAGE 04 USUN N 03795 05 OF 10 180001Z

THIS NEGOTIATION FOCUSED ON ARTICLE 44, 46, 47, AND 75 OF PART II OF THE REVISED SINGLE NEGOTIATING TEXT (RSNT). THE TEXT OF THOSE ARTICLES AS WRITTEN IS UNACCEPTABLE TO THE UNITED STATES. ARTICLE 44, SETTING FORTH COASTAL STATE RIGHTS IS TOO INCLUSIVE, AND ARTICLE 46, SETTING FORTH THE RIGHTS IN THE ZONE OF OTHER STATES IS INADQUATE. ALONE, ARTICLE 47 IS AN IMPRATICAL AND UNSATISFACTORY WAY TO DEAL WITH THE QUESTION OF RESIDUAL RIGHTS. ARTICLE 75 IS THE MOST OFFENSIVE SINCE IT STATES UNEQUIVOCALLY THAT THE ZONE IS NOT HIGH SEAS.

THE DEBATES ON THIS ISSUE WERE CONSTANTLY TAINTED BY THE INTRODUCTORY NOTE TO THE RSNT IN WHICH THE CHAIRMAN STATED CLEARLY THAT IN HIS VIEW THE ZONE WAS NEITHER HIGH SEAS NOR TERRITORIAL SEA, BUT A ZONE SUI GENERIS. HE HINTED THAT ARTICLE 75 SHOULD NOT BE A SUBJECT FOR DEBATE.

DURING THE OPENING WEEKS OF THE SESSION, THE U.S., SUPPORTED BY THE EUROPEAN COMMUNITY, ITS NATO ALLIES, AND THE MAJOR MARITIME POWERS, PRESSED AMENDMENTS TO STRENGTHEN THE HIGH SEAS CHARACTER OF THE ZONE, RESERVING TO COASTAL STATES RESOURCE AND OTHER SPECIFIC RIGHTS PROVIDED FOR IN THE CONVENTION. THE U.S. AND

CONFIDENTIAL

NNN

CONFIDENTIAL

PAGE 01 USUN N 03795 06 OF 10 180003Z

63

ACTION DLOS-06

INFO OCT-01 IO-13 ISO-00 FEA-01 ACDA-07 AGR-05 AID-05

CEA-01 CEQ-01 CG-00 CIAE-00 CIEP-01 COME-00 DODE-00

DOT-00 EB-07 EPA-01 ERDA-05 FMC-01 TRSE-00 H-02

INR-07 INT-05 JUSE-00 L-03 NSAE-00 NSC-05 NSF-01

OES-06 OMB-01 PA-01 PM-04 PRS-01 SP-02 SS-15 USIA-06

SAL-01 AF-08 ARA-06 EA-07 EUR-12 NEA-10 /158 W

----- 066637

P 172153Z SEP 76

FM USMISSION USUN NEW YORK

TO SECSTATE WASHDC PRIORITY 9237

C O N F I D E N T I A L SECTION 6 OF 10 USUN 3795

FROM US DEL LOS

THE EC-9 TABLED SIMILAR VERSIONS OF THESE AMENDMENTS.

ON THE EXTREME END OF THE SPECTRUM, TERRITORIAL-
ISTS (PERU, URUGUAY, BRAZIL, SUPPORTED BY KENYA AND
TANZANIA), PRESSED FOR AMENDMENTS WHICH WOULD HAVE THE
EFFECT OF CREATING THE ZONE OF NATIONAL JURISDICTION,
OR THE FUNCTIONAL EQUIVALENT OF A TERRITORIAL SEA.

AS THE SESSION DREW ON, A GROUP OF COASTAL STATES
WHO ARE MODERATE ON THIS ISSUE (AUSTRALIA, NORWAY,
CANADA, NEW ZEALAND) BEGAN TO LOOK FOR OTHER WAYS
AROUND THE PROBLEM. A NUMBER OF FORMULAS WERE DEVELOPED
WHICH LATER ATTRACTED THE ATTENTION OF SOME MAJOR MARI-
TIME COUNTRIES (UK, FRANCE). THESE FORMULAS CONCENTRATED ON
STRENGTHENING RIGHTS OF OTHER STATES IN ECONOMIC ZONES,
WHILE EITHER AVOIDING CHARACTERIZATION OF THE NATURE
OF THE ZONE, OR LEAVING THE ZONE TO BE CALLED SUI
GENERIS. IN THE SMALL CONSULTING GROUP ON THIS SUBJECT,
CONFIDENTIAL

CONFIDENTIAL

PAGE 02 USUN N 03795 06 OF 10 180003Z

A PROPOSAL ALONG THESE LINES FOR AMENDING ARTICLE 46
WAS TABLED BY THE UNITED ARAB EMIRATES, AND IT
BECAME THE FOCUS OF DISCUSSION IN THE FINAL DAYS. QUOTE

ARTICLE 46

1. IN THE EXCLUSIVE ECONOMIC ZONE, ALL STATES, WHETHER
COASTAL OR LANDLOCKED, ENJOY, SUBJECT TO THE RELEVANT
PROVISIONS OF THE PRESENT CONVENTION:

(A) THE HIGH SEAS FREEDOMS OF NAVIGATION AND OVER-
FLIGHT AND OF THE LAYING AND MAINTAINING OF SUBMARINE
CABLES AND PIPELINES; AND

(B) OTHER GENERALLY RECOGNIZED HIGH SEAS USES
COMPATIBLE WITH THE PRINCIPLES EMBODIED IN THE CHARTER
OF THE UNITED NATIONS AND OTHER RULES OF INTERNATIONAL LAW.

THE FREEDOMS AND USES REFERRED TO IN PARAGRAPH 1 SHALL
BE EXERCISED TAKING INTO ACCOUNT THE RIGHTS AND DUTIES
OF COASTAL STATES AS PROVIDED FOR IN THIS CHAPTER. UNQUOTE

SECRETARY KISSINGER, DURING HIS VISITS, STRESSED
TO A NUMBER OF DELEGATIONS THE NEED TO RESOLVE THE
ISSUE, AND PUT EMPHASIS ON TRYING TO HANDLE THE PROBLEM
THROUGH A STRENGTHENING AND CLARIFICATION OF VARIOUS
RIGHTS AND DUTIES IN THE ZONE. THIS GAVE ADDITIONAL
IMPETUS TO THE EFFORT OF THE MODERATES, WHO FAIL TO
UNDERSTAND U.S. INSISTENCE ON CHANGING ARTICLE 75;
ALTHOUGH THE SECRETARY'S REMARKS DID NOT REFLECT ANY
CHANGE IN U.S. BASIC POSITION.

THIS MODERATE TREND DID NOT ACHIEVE ENOUGH MOMENTUM
TO AFFECT THE NEGOTIATIONS IN ANY MEANINGFUL WAY BY THE
END OF THE SESSION, ALTHOUGH THERE WAS AN INDICATION OF
SOME SOFTENING ON DETAILS BY BOTH THE TERRITORIALISTS,
THE EC-9, AND SOME OF THE MAJOR MARITIME COUNTRIES. AS NO NEW
TEXT WAS PRODUCED THIS SESSION, THIS MEANS THAT THE
EXISTING UNSATISFACTORY ARTICLES MAY BE THE MODEL FOR LEGISLATION
BY COASTAL STATES WHO ANTICIPATE UNILATERAL ACTION OVER
THE NEXT FEW MONTHS.

CONFIDENTIAL

CONFIDENTIAL

PAGE 03 USUN N 03795 06 OF 10 180003Z

UNLESS A SATISFACTORY SOLUTION OF THIS ISSUE CAN BE
REACHED, IT IS POSSIBLE THAT THE NEGOTIATIONS MAY DEADLOCK
ON THIS ISSUE.

THE CONTINENTAL MARGIN

THE QUESTIONS BEING NEGOTIATED INCLUDE THE DEFINITION OF THE OUTER LIMIT OF THE CONTINENTAL MARGIN AND REVENUE SHARING. DISCUSSIONS FOCUSED ON A PROPOSAL BY IRELAND AND CANADA WHICH WOULD ALLOW THE COASTAL STATE TO SET THE OUTER LIMIT OF THE MARGIN WHERE IT EXTENDS BEYOND 200 MILES EITHER AT A FIXED DISTANCE FROM THE FOOT OF THE SLOPE OR AT A FIXED DEPTH OF SEDIMENT. THIS WAS COUPLED WITH A U.S. PROPOSAL ON REVENUE SHARING THAT CALLED FOR NO SHARING FOR FIVE YEARS, AND THEN ANNUAL INCREMENTS OF 1 PERCENT OF THE VALUE OF PRODUCTION AT THE SITE THEREAFTER TO A MAXIMUM OF 5 PERCENT. AUSTRIA STATED THAT 7 PERCENT WOULD BE MORE APPROPRIATE. THIS WAS A SIGNIFICANT CHANGE FROM THEIR PREVIOUS POSITION AND RESULTED IN NARROWING THE RANGE OF FIGURES BEING SERIOUSLY CONSIDERED; I.E., 5-7 PERCENT.

THE LANDLOCKED AND GDS GENERALLY FAVORED AN ABSOLUTE OUTER LIMIT OF 200 MILES, MAKING THE MARGIN COINCIDENT WITH THE ECONOMIC ZONE. HOWEVER, THEY INDICATED THROUGH THEIR PRINCIPAL SPOKESMEN (SINGAPRE, AUSTRIA) FLEXIBILITY ON A PACKAGE SETTING A PRECISE OUTER LIMIT COUPLED WITH GENEROUS BENEFITS FOR DEVELOPING LL/GDS FROM THE REVENUES GENERATED FROM THE SHELF BEYOND 200 NAUTICAL MILES. THE ARAB GROUP WAS MOST INTENT ON A 200-MILE LIMIT, BUT TUNISIA CLEARLY INDICATED OTHERWISE AT THE END OF THE SESSION. MEXICO PROPOSED THAT ONE-HALF OF THE REVENUES SHARED SHOULD GO TO STRENGTHEN THE INTERNATIONAL SEABED RESOURCE AUTHORITY, WHILE THE OTHER HALF SHOULD GO TO DEVELOPING LANDLOCKED STATES. THAT PROPOSAL DID NOT RECEIVE VERY MUCH ATTENTION BUT IS STILL ON THE "TABLE."

ARGENTINA PRESSED FOR SPECIAL TREATMENT FOR DEVELOPING STATES ON THE QUESTION OF REVENUE SHARING BEYOND 200 MILES, WHILE THE U.S. CONTINUED TO INSIST THAT ALL

CONFIDENTIAL

CONFIDENTIAL

PAGE 04 USUN N 03795 06 OF 10 180003Z

MARGIN STATES SHOULD CONTRIBUTE ALIKE WITH ADJUSTMENTS BEING MADE FOR STAGES OF DEVELOPMENT, IF NECESSARY, BY THE SYSTEM OF REVENUE DISTRIBUTION. THE LL/GDS AND MEXICO ADOPTED A SIMILAR STANCE. THE U.S. ALSO CONTINUES TO URGE THAT REVENUES BE ALLOCATED BY APPROPRIATE GLOBAL OR REGIONAL DEVELOPMENT ORGAN(S) WHILE MANY OTHER STATES ARE CONSIDERING THE INTERNATIONAL SEABED RESOURCE AUTHORITY FOR THIS PURPOSE.

THE OUTLINES OF THE PACKAGE DEAL ON THIS ISSUE ARE PRESENT. IT IS NOT YET CLEAR WHETHER THE IRISH FORMULA WILL PREVAIL, OR A FIXED-DISTANCE-ONLY FORMULA WILL PREVAIL. NOR IS IT YET CLEAR HOW MUCH REVENUE SHOULD BE SHARED ALTHOUGH A SLIDING SCALE OF 1-5 PERCENT OR 7 PERCENT WAS

A PRIMARY TOPIC OF DISCUSSION.

LANDLOCKED AND GEOGRAPHICALLY DISADVANTAGED STATES (LL/GDS)

THIS ISSUE HAS PROVED TO CONTINUE TO BE CONTENTIOUS. THE LL/GDS HAVE CONTINUED STRONG PRESSURES FOR ACCESS AS A MATTER OF RIGHT TO THE LIVING RESOURCES OF NEIGHBORING ZONES OR ZONES OF A REGION, WITHOUT RESPECT TO SURPLUS. THIS PRESSURE HAS RESULTED IN THE SOLIDIFICATION INTO A FORMAL GROUP NUMBER OF PREVIOUSLY LOOSELY AFFILIATED COASTAL STATES. THIS NEW COASTAL STATES GROUP HAS, UNDER THE LEADERSHIP OF MEXICO, FIRMLY OPPOSED THE PROPOSALS OF THE LL/GDS. A CONTACT GROUP OF THE TWO GROUPS HAS NEGOTIATED THROUGH THE LATTER HALF OF THE SESSION AND HAS A NEGOTIATING TEXT BEFORE THEM FOR CONSIDERATION. THAT IS A POSITIVE SIGN. AMONG THE ITEMS ON WHICH THERE IS DISAGREEMENT ARE: PREFERENCES FOR LL/GDS OVER OTHER STATES IN FISHERIES OF THE REGION; THE TREATMENT OF LANDLOCKED VERSUS GDS; AND DISTINCTIONS BETWEEN TREATMENT OF DEVELOPING AS OPPOSED TO DEVELOPED STATES.

THE ISSUES HAVE NO DIRECT BEARING ON THE INTERESTS OF THE U.S., SO LONG AS THE RELEVANT ARTICLES ARE CAREFULLY DRAFTED. BUT THE U.S. CONTINUES TO PRESS BOTH SIDES TO FIND A SOLUTION SOT THAT A TROUBLESOME ISSUE COULD

CONFIDENTIAL

NNN

CONFIDENTIAL

PAGE 01 USUN N 03795 07 OF 10 180107Z

63

ACTION DLOS-06

INFO OCT-01 IO-13 ISO-00 FEA-01 ACDA-07 AGR-05 AID-05

CEA-01 CEQ-01 CG-00 CIAE-00 CIEP-01 COME-00 DODE-00

DOT-00 EB-07 EPA-01 ERDA-05 FMC-01 TRSE-00 H-02

INR-07 INT-05 JUSE-00 L-03 NSAE-00 NSC-05 NSF-01

OES-06 OMB-01 PA-01 PM-04 PRS-01 SP-02 SS-15 USIA-06

SAL-01 AF-08 ARA-06 EA-07 EUR-12 NEA-10 /158 W

----- 068780

P 172153Z SEP 76

FM USMISSION USUN NY

TO SECSTATE WASHDC PRIORITY 9238

C O N F I D E N T I A L SECTION 7 OF 10 USUN 3795

FROM US DEL LOS

BE REMOVED, THUS IMPROVING THE PROSPECTS FOR A SUCCESSFUL TREATY. IT SHOULD BE NOTED, HOWEVER, THAT THE INTEREST OF THE LL/GDS GROUP IN PRESERVING THE HIGH SEAS STATUS OF THE ECONOMIC ZONE MAY BE REDUCED IF THE ISSUE OF THEIR ACCESS IS RESOLVED. THUS, AN EARLY RESOLUTION OF THE LL/GDS PROBLEM, BEFORE THE RESOLUTION OF THE STATUS OF THE ECONOMIC ZONE PROBLEM, COULD RESULT IN SIGNIFICANT LOSS OF SUPPORT ON THE LATTER ISSUE.

OTHER ISSUES OF IMPORTANCE TO THE LL/GDS ARE ACCESS TO THE SEA AND TRANSIT RIGHTS, AND REVENUE SHARING FROM THE CONTINENTAL MARGIN.

AS A BY-PLAY OF THE FISHERIES DEBATES BETWEEN THE LL/GDS AND COASTAL STATES, ECUADOR HAS ATTEMPTED TO REOPEN THE DEBATE ON TUNA BY PROPOSING A SET OF PRINCIPLES DESIGNED TO STRENGTHEN THE ABILITY OF COASTAL STATES TO CONTROL THE RESOURCE IN THEIR ECONOMIC ZONE. CONFIDENTIAL

CONFIDENTIAL

PAGE 02 USUN N 03795 07 OF 10 180107Z

ECUADOR WAS UNHAPPY OVER THE CHANGE APPEARING IN THE RSNT THAT PULLED THE ARTICLE SLIGHTLY AWAY FROM HARD-LINE COASTAL STATE ORIENTATION. SHE WAS SUPPORTED IN HER EFFORT BY ABOUT THIRTY STATES, MOST OF WHOM HAD LITTLE OR NO INTEREST IN TUNA, BUT WHO SAW THIS AS A FURTHER OPPORTUNITY TO STRENGTHEN THE SOVEREIGNTY OF COASTAL STATES IN THE ECONOMIC ZONE. THE U.S. AGREED PRIVATELY WITH ECUADOR THAT FURTHER EXPLORATORY TALKS COULD BE HELD WITH AFFECTED STATES AND FISHING STATES IF A PROPER BASIS FOR NEGOTIATIONS COULD BE IDENTIFIED.

STRAITS USED FOR INTERNATIONAL NAVIGATION

IN THE OPENING DAYS OF THIS SESSION, PRESIDENT AMERASINGHE PRESENTED THE CONFERENCE WITH A LETTER OUTLINING THOSE ISSUES HE VIEWED AS NEEDING FURTHER WORK. ALTHOUGH THE QUESTION APPEARED TO HAVE BEEN LAID TO REST AT PREVIOUS SESSIONS, HE CHOSE TO INCLUDE THE SUBJECT OF STRAITS. TOWARD THE END OF THE SESSION, CHAIRMAN AGUILAR ANNOUNCED THE FORMATION OF A SPECIAL NEGOTIATING GROUP (NG) TO CONSIDER FURTHER THAT ITEM. DISCUSSIONS IN THE NG FOCUSED ON TWO BASIC AREAS: (1) STRENGTHENING OF THE CONTROL IN STRAITS BY STATES BORDERING THEM; AND (2) THE STRAITS OF TIRAN PROBLEM.

MALAYSIA TABLED A SET OF ARTICLES DESIGNED BOTH TO STRENGTHEN HER CONGROL OVER NAVIGATION AND OVERFLIGHT AND TO PROTECT HER INTERESTS VIS-A-VIS POLLUTION. THESE ARTICLES HAVE DRAWN CONSIDERABLE SYMPATHY, AS WELL AS POSITIVE SUPPORT FROM OTHER STRAIT STATES AND THE USSR AND PRIVATE GENERAL SUPPORT FROM OTHERS INCLUDING THE UN AND FRANCE.

THE MARITIME POWERS, INCLUDING THE U.S., HAVE STRONGLY OPPOSED FURTHER NEGOTIATIONS ON THE STRAITS ISSUE, AND RESISTED THE FORMATION OF SPECIAL GROUPS WITH- IN THE VONFERENCE FOR FURTHER WORK. JAPAN HAS BEEN GREATLY CONCERNED BECAUSE OF MALAYSIAN PROPOSALS TO INCLUDE LANGUAGE ON UNDER-THE-KEEL CLEARANCE FOR VESSELS. WE HAVE TOLD MALAYSIA THAT WE WOULD MEET WITH THEM DURING THE INTERSESSIONAL PERIOD TO CONSIDER FURTHER THE STRAITS
CONFIDENTIAL

CONFIDENTIAL

PAGE 03 USUN N 03795 07 OF 10 180107Z

ISSUE.

THE TIRAN ISSUE WAS REOPENED BY EGYPT, REPRESENTING THE ARAB GROUP, WHO PROPOSED AMENDMENTS TO ARTICLE 43 THAT WOULD MAKE INNOCENT PASSAGE TO TIRAN SUSPENDABLE. ISRAEL PROPOSED THAT THE TRANSIT PASSAGE REGIME APPLY TO ALL STRAITS USED FOR INTERNATIONAL NAVIGATION, RATHER THAN APPLY THE NON-SUSPENDABLE INNOCENT PASSAGE REGIME TO STRAITS LIKE TIRAN.

REOPENING OF THE STRAITS ARTICLES WOULD STRIKE AT THE HEART OF THE NAVIGATION PROTECTIONS IN THE TREATY AND IS UNACCEPTABLE.

DELIMITATION BETWEEN OPPOSITE AND ADJACENT STATES

THIS ISSUE WAS OPENED LATE IN THE DEBATES. DISCUSSIONS IN THE NG WERE CARBON COPIES OF THOSE HEARD IN THE SPRING SESSION. BECAUSE THESE ISSUES ARE ESSENTIALLY BILATERAL IN NATURE, THE SIDES ARE CLEARLY DRAWN. ON ONE SIDE, THERE ARE THOSE STATES WHO BELIEVE AGREEMENT ON DELIMI- TATION BETWEEN STATES SHOULD BE ON THE BASIS OF EQUITY, AND ON THE OTHER ARE THOSE FAVORING THE EQUIDISTANCE LINE. PRECISE PAIRINGS (SUCH AS GREECE AND TURKEY, LIBYA AND TUNISIA, VENEZUELA, AND COLOMBIA) CAN BE IDENTIFIED IN THE DEBATE. THE ISSUE COULD AFFECT OUR OWN BILATERAL NEGOTIATIONS WITH OUR NEIGHBORS. CANADA FAVORED EQUIDISTANCE AND SUBMITTED TWO SUCCESSIVE AMENDMENTS ON ARTICLE 62(1). THE FIRST PROPOSAL WAS AS FOLLOWS: QUOTE THE DELIMITATION OF THE EXCLUSIVE ECONOMIC ZONE BETWEEN ADJACENT AND OPPOSTE STATES SHALL BE EFFECTED BY AGREEMENT

EMPLOYING, AS A GENERAL RULE, THE MEDIAN OR EQUIDISTANCE
LINE, TAKING INTO ACCOUNT SPECIAL CIRCUMSTANCES, WHERE
JUSTIFIED, IN ORDER TO REACH AN EQUITABLE RESULT. UNQUOTE
IT WAS SUPPORTED GENERALLY BY THOSE FAVORING EQUIDISTANCE.
SUBSEQUENTLY, THEY TABLED A SOMEWHAT MORE NEUTRAL FORMULATION:
QUOTE THE DELIMITATION OF THE EXCLUSIVE ECONOMIC
ZONE BETWEEN ADJACENT AND OPPOSITE STATES SHALL BE
EFFECTED BY AGREEMENT EMPLOYING THE MEDIAN OR EQUIDISTANCE
LINE OR ANOTHER LINE AS MAY BE JUSTIFIED BY SPECIAL
CIRCUMSTANCES IN ORDER TO REACH AN EQUITABLE RESULT.
CONFIDENTIAL

CONFIDENTIAL

PAGE 04 USUN N 03795 07 OF 10 180107Z

UNQUOTE. THIS PROPOSAL RECEIVED LITTLE SUPPORT AND WAS OPPOSED
BY THE EQUIDISTANCE ADVOCATES. ALSO IN QUESTION IS THE WAY
THE DELIMITATION PROBLEM SHOULD BE HANDLED PENDING AGREEMENT
BETWEEN THE STATES CONCERNED.

THE PRESENT TEXT PROVIDES FOR AGREEMENT ON AN EQUITABLE
BASIS, TAKING INTO ACCOUNT THE MEDIAN LINE. BECAUSE OF
THE SPLIT IN DEBATE, THERE IS NO BASIS FOR A CHANGE IN THE
EXISTING TEXT.

OTHER ISSUES

DURING A LIMITED DEBATE PERIOD, STATES WERE PERMITTED TO
RAISE OTHER ISSUES, NOT COVERED BY NGS, TO SEE HOW
MUCH SUPPORT THERE WAS FOR CHANGE. CANADA SUGGESTED
DELETION FROM THE SECOND COMMITTEE TEXT OF THE PROVISIONS
DEALING WITH DESIGN, CONSTRUCTION, MANNING AND EQUIPMENT
STANDARDS IN THE TERRITORIAL SEA. THE DEBATES ON BOTH SIDES
OF THE ISSUE CLEARLY SHOWED THE NEED FOR COORDINATION WITH
COMMITTEE THREE, AND THE CHAIR INDICATED HIS INTEREST OF
DOING SO.

OTHER ISSUES RECEIVING LIMITED ATTENTION WERE RAISED
PERTAINING TO ARCHIPELAGOES (INDONESIA, PHILIPPINES),
TERRITORIAL SEAS (ECUADOR, PRC, TURKEY), ENCLOSED AND SEMI-
ENCLOSED SEAS (TURKEY, DENMARK, YUGOSLAVIA), BASELINES
(BANGLADESH), AND MID-OCEAN ARCHIPELAGOES BELONGING TO
COASTAL STATES (INDIA).

DURING THE DISCUSSIONS, THE QUESTION OF PRIOR AUTHORIZATION
FOR WARSHIPS IN THE TERRITORIAL SEA WAS RAISED BY SOME
STATES (INDIA, PRC, ARGENTINA, PHILIPPINES, ETC.)

NO SINGLE ISSUE DREW ENOUGH ATTENTION TO WARRANT
FURTHER CONSIDERATION BY THE COMMITTEE AND THE CHAIR
SUGGESTED THAT INTERESTED STATES TRY TO WORK OUT ACCOMMODATIONS
WHERE POSSIBLE AND TO REPORT ANY RESULTS TO HIM.

CONFIDENTIAL

NNN

CONFIDENTIAL

PAGE 01 USUN N 03795 08 OF 10 180111Z

63

ACTION DLOS-06

INFO OCT-01 IO-13 ISO-00 FEA-01 ACDA-07 AGR-05 AID-05

CEA-01 CEQ-01 CG-00 CIAE-00 CIEP-01 COME-00 DODE-00

DOT-00 EB-07 EPA-01 ERDA-05 FMC-01 TRSE-00 H-02

INR-07 INT-05 JUSE-00 L-03 NSAE-00 NSC-05 NSF-01

OES-06 OMB-01 PA-01 PM-04 PRS-01 SP-02 SS-15 USIA-06

SAL-01 AF-08 ARA-06 EA-07 EUR-12 NEA-10 /158 W

----- 068950

P 172153Z SEP 76

FM USMISSION USUN NY

TO SECSTATE WASHDC PRIORITY 9239

C O N F I D E N T I A L SECTION 8 OF 10 USUN 3795

COMMITTEE III

I. MARINE SCIENTIFIC RESEARCH

A. US OBJECTIVES: THE US WORKED TO ACHIEVE TWO OBJECTIVES--ELIMINATE THE GENERAL CONSENT CONCEPT AND SIGNIFICANTLY IMPROVE THE GENERAL REGIME AND PROCEDURES FOR MARINE SCIENTIFIC RESEARCH (SEE DETAILS IN UNCLASSIFIED REPORT).

B. NEGOTIATIONS AT THIS SESSION: SEVERAL FACTORS MADE IT IMPOSSIBLE TO ACHIEVE THESE OBJECTIVES. THE COASTAL DEVELOPING COUNTRIES CONTINUED TO SUPPORT THE CONSENT PRINCIPLE WITHOUT EXCEPTION. THE SOVIET UNION PUBLICLY ACCEPTED A TOTAL, UNQUALIFIED CONSENT REGIME. MOST OF OUR PAST SUPPORTERS IN THE DEVELOPED WORLD WERE WILLING TO MAKE SIGNIFICANT CONCESSIONS. FRANCE ACTIVELY SEEKS THE QUALIFIED CONSENT REGIME IN THE EXISTING TEXT, WHILE JAPAN COULD ACCEPT IT. ONLY THE FRG AND THE NETHERLANDS WOULD SUPPORT US TO THE END AND THEIR PUBLIC

CONFIDENTIAL

CONFIDENTIAL

PAGE 02 USUN N 03795 08 OF 10 180111Z

EFFORTS WERE NOT AS HELPFUL AS HOPED. FINALLY, CHAIRMAN YANKOV (BULGARIA) HAS PUBLICLY AND PRIVATELY CONTINUALLY PLACED HEAVY PRESSURE ON US AND HAS RESISTED EFFORTS TO PRODUCE A SITUATION IN WHICH WE WOULD HAVE A CHANCE OF NEGOTIATING OUR POSITION. IN PUBLIC, AND PROBABLY IN PRIVATE, HE HAS AVOIDED PUTTING PRESSURE ON THE DEVELOPING COASTAL COUNTRIES.

THE DEVELOPING COASTAL COUNTRIES HAVE PLACED GREAT EMPHASIS ON THE CONSENT CONCEPT AND, WITHOUT EXCEPTION, HAVE INSISTED THAT ANY COMPROMISE MUST BE BASED ON THAT CONCEPT. THERE HAVE BEEN INDICATIONS THAT MANY OF THEM WOULD ACCEPT MEANINGFUL RESTRICTIONS ON THE EXERCISE OF CONSENT, HOWEVER. ALMOST ALL HAVE ACCEPTED THE PRINCIPLE OF A SPECIFIC LIST OF CRITERIA ALLOWING CONSENT TO BE DENIED. WHILE THEY HAVE MADE PROPOSALS WHICH WOULD BROADEN THAT LIST TO BECOME ALMOST THE PRACTICAL EQUIVALENT OF UNQUALIFIED CONSENT, MOST SEEM WILLING TO LIMIT THE LIST. THE LIST WOULD INCLUDE SCIENTIFIC RESEARCH ACTIVITIES BEARING SUBSTANTIALLY ON RESOURCE EXPLORATION AND EXPLOITATION, SCIENTIFIC RESEARCH USING DRILLING OR EXPLOSIVES ON THE CONTINENTAL SHELF, AND SCIENTIFIC RESEARCH INVOLVING THE USE OF ARTIFICIAL ISLANDS OR STRUCTURES. MOST SEEMED WILLING, AS PART OF A COMPROMISE, TO DELETE THE CONSENT CRITERIA RELATING TO UNDUE INTERFERENCE WITH ECONOMIC ACTIVITIES IF A FLAG STATE OBLIGATION ON THE POINT WERE INCLUDED. SOME CONTINUE TO SEEK A RIGHT TO DENY CONSENT ON SECURITY GROUNDS ALTHOUGH MOST WOULD DROP THIS IN A COMPROMISE.

THE CONCEPT OF TACIT CONSENT WAS BRIEFLY DISCUSSED AND ALTHOUGH OPPOSED BY SOME WAS ACCEPTED BY MOST OTHERS IF PART OF A COMPROMISE. THIS WOULD REQUIRE NOTIFICATION TO THE COASTAL STATE, BUT WOULD PRESUME THE GRANTING OF CONSENT IF NO RESPONSE WAS MADE WITHIN A PERIOD SPECIFIED IN THE TREATY.

THE QUESTION OF DISPUTE SETTLEMENT FOR SCIENTIFIC RESEARCH WAS TOUCHED ON BUT DEFERRED PENDING THE OUTCOME OF NEGOTIATIONS ON PART IV.

CONFIDENTIAL

CONFIDENTIAL

PAGE 03 USUN N 03795 08 OF 10 180111Z

THE QUESTION OF RESTRICTIONS ON PUBLICATION WAS NOT REACHED.

ON THE ISSUE OF WHETHER THE REGIME FOR SCIENTIFIC RESEARCH SHOULD EXTEND TO THE CONTINENTAL MARGIN, BEYOND 200 MILES, THE US WAS ISOLATED IN ITS VIEW THAT IT SHOULD NOT SO EXTEND.

CHAIRMAN YANKOV'S SUMMARY REPORT IS HARMFUL IN INCLUDING HIS SO-CALLED TEST PROPOSAL WHICH PROVIDES A BROAD DISCRETIONARY CONSENT RIGHT TO THE COASTAL STATE AND IN STATING HIS ASSESSMENT THAT A COMPROMISE MUST BE BASED ON THE CONSENT CONCEPT.

DURING THE LAST TWO WEEKS, AUSTRALIA PUSHED A COMPROMISE WHICH ACCEPTS THE CONSENT CONCEPT BUT LIMITS THE CRITERIA FOR WITHHOLDING CONSENT AND INCLUDES TACIT CONSENT. THEY REPORTED THAT MANY DEVELOPING COASTAL COUNTRIES SPOKE FAVORABLY ON THE PROPOSAL, BUT CHAIRMAN YANKOV BLOCKED EFFORTS TO HAVE THE PROPOSAL REFLECTED IN THE FORMAL RECORDS OF THE COMITE.

II. MARINE POLLUTION

A. US OBJECTIVES: WE GENERALLY WANTED TO MAINTAIN THE STRUCTURE OF THE EXISTING TEXT WHILE AMENDING SEVERAL ARTICLES AND ACHIEVING A MAJOR CHANGE IN THE TEXT ON STANDARD-SETTING IN THE TERRITORIAL SEA FOR VESSEL-SOURCE POLLUTION.

B. NEGOTIATIONS AT THIS SESSION: CHAIRMAN YANKOV AND MOST OF THE COMITE FELT THE RSNT STRUCK A REASONABLE COMPROMISE IN PRINCIPLE AND THUS SHOULD BE PRESERVED. A LARGE NUMBER OF AMENDMENTS WERE SUBMITTED, BUT PROCEDURES AVOIDED REAL NEGOTIATION AND MANY ISSUES WERE NEVER EVEN DISCUSSED.

REGARDING THE TERRITORIAL SEA, WE CONTINUED TO TRY TO ELIMINATE OR AT LEAST REDUCE THE RESTRICTIONS ON COASTAL STATE STANDARD-SETTING AUTHORITY OVER VESSELS WHILE RETAINING THE REQUIREMENT NOT TO HAMPER INNOCENT

CONFIDENTIAL

PAGE 04 USUN N 03795 08 OF 10 180111Z

PASSAGE. THE MARITIME STATES STRONGLY SUPPORTED THE RESTRICTIONS AND A NUMBER OF DEVELOPING COASTAL COUNTRIES SUPPORTED THEM ON THE GROUNDS THAT THEY WANT TO DEVELOP THEIR OWN MERCHANT FLEETS. THE ISSUE WAS DISCUSSED IN A NUMBER OF FORA BUT THE UK, WHICH LED THE MARITIME, WAS UNWILLING TO MOVE AT ALL THUS PRODUCING A STALEMATE. CANADA FLOATED SOME POSSIBLE COMPROMISES INCLUDING LIMITING THE RESTRICTIONS TO THE DESIGN AND CONSTRUCTION OF VESSELS AND LIMITING RESTRICTIONS TO MATTERS WHICH ARE ADEQUATELY

REGULATED INTERNATIONALLY.

CANADA INFORMED US THAT THEIR CABINET HAD
DECIDED TO ACCEPT THE PACKAGE ON THE ARCTIC. HOWEVER, THEY
INFORMED US THAT THEY MAY WELL DRAW BASELINES
AROUND THEIR "ARCTIC ARCHIPELAGO" IN THE FUTURE ALTHOUGH
THEY DID NOT ASK US TO AGREE OR TO ACQUIESCE IN THEIR
VALIDITY. BECAUSE OF THIS NEW ELEMENT, WE HAVE NOT
ACCEPTED OR REJECTED THE PACKAGE.

III. TRANSFER OF TECHNOLOGY

THERE WAS LITTLE DISCUSSION OF THIS ITEM. THE US
ATTEMPTED TO ELIMINATE ALL SPECIFIC OBLIGATIONS TO
TRANSFER DEEP SEABED TECHNOLOGY, BUT WAS MET WITH A RATHER
SOLID DEVELOPING COUNTRY FRONT. HOWEVER, BECAUSE OF THE
BRIEF NATURE OF THE DISCUSSION, NO REAL EFFORT TO FIND
A COMPROMISE EMERGED. SECY. KISSINGER MENTIONED THE ISSUE,
INDICATING THAT IT HAD TO BE WORKED OUT AS PART OF AN
ACCEPTABLE COMMITTEE AGREEMENT.

CONFIDENTIAL

NNN

CONFIDENTIAL

PAGE 01 USUN N 03795 09 OF 10 172350Z

63

ACTION DLOS-06

INFO OCT-01 IO-13 ISO-00 FEA-01 ACDA-07 AGR-05 AID-05

CEA-01 CEQ-01 CG-00 CIAE-00 CIEP-01 COME-00 DODE-00

DOT-00 EB-07 EPA-01 ERDA-05 FMC-01 TRSE-00 H-02

INR-07 INT-05 JUSE-00 L-03 NSAE-00 NSC-05 NSF-01

OES-06 OMB-01 PA-01 PM-04 PRS-01 SP-02 SS-15 USIA-06

SAL-01 AF-08 ARA-06 EA-07 EUR-12 NEA-10 /158 W

----- 066059

P 172153Z SEP 76

FM USMISSION USUN NY

TO SECSTATE WASHDC PRIORITY 9240

C O N F I D E N T I A L SECTION 9 OF 10 USUN 3795

DISPUTE SETTLEMENT

THE PRINCIPAL DISPUTE SETTLEMENT ISSUES ARE SUBSTANTIVELY OR TACTICALLY DEPENDENT ON THE RESULTS OF DELIBERATIONS IN THE MAIN COMMITTEES. NEGOTIATIONS THE LAW OF THE SEA TRIBUNAL COULD NOT BE MEANINGFULLY CONDUCTED SO LONG AS COMMITTEE I DOES NOT INDICATE WHETHER THE SEABED TRIBUNAL CONTAINED IN THE REVISED SINGLE NEGOTIATING TEXT, PART I, SHOULD REMAIN SEPARATE FROM THE LAW OF THE SEA TRIBUNAL. EXCLUSIONS RELATING TO THE ECONOMIC ZONE COULD NOT BE SUCCESSFULLY NEGOTIATED APART FROM A RESOLUTION OF THE STATUS OF THE ECONOMIC ZONE OR THE REGIME FOR MARINE SCIENTIFIC RESEARCH. THE REVIEW OF THE SINGLE NEGOTIATING TEXT THUS FOLLOWED THE FORM OF AN ARTICLE-BY-ARTICLE DEBATE, WITH LITTLE OR NO REAL NEGOTIATION BETWEEN DELEGATIONS TAKING PLACE.

A. GENERAL

THE PRINCIPAL PARTICIPANTS IN THE DEBATE ON
CONFIDENTIAL

CONFIDENTIAL

PAGE 02 USUN N 03795 09 OF 10 172350Z

DISPUTE SETTLEMENT WERE IN US, UK, USSR, FRANCE, NETHERLANDS, ISRAEL, FRG, EL SALVADOR, ECUADOR, KENYA, BAHRAIN, TUNISIA, LIBERIA, INDIA, AND AUSTRALIA. ALL SPEAKERS EXCEPT THE PRC AND OMAN SUPPORTED THE PRINCIPLE OF OBLIGATORY DISPUTE SETTLEMENT ENTAILING A FINAL AND BINDING DECISION. HOWEVER, A FEW EXTREME COASTAL STATES, SUCH AS INDIA AND MADAGASCAR, CONDITIONED THEIR ACCEPTANCE OF AN OBLIGATORY SYSTEM ON THE EXCLUSION OF ALL DISPUTES RELATING TO THE ECONOMIC ZONE. MEXICO, ON BEHALF OF THE COASTAL STATES GROUP, SIMILARLY LINKED SUPPORT OF COMPULSORY SETTLEMENT TO ACCEPTANCE OF THE GROUP'S POSITION RESPECTING THE EXCLUSION OF CERTAIN ECONOMIC ZONE DISPUTES. THE SOVIET UNION AND SEVERAL OF ITS ALLIES CONDITIONED THEIR ACCEPTANCE ON THE RETENTION OF THE SYSTEM OF SPECIAL PROCEDURES CONTAINED IN ANNEX II AND, IN BILATERAL DISCUSSIONS WITH US, THE USSR SAID THAT THEY WOULD OPPOSE ANY COMPULSORY DISPUTE SETTLEMENT UNLESS MARITIME BOUNDARY DISPUTES COULD CLEARLY BE EXCLUDED. INDIA, ECUADOR, ALGERIA AND OTHERS EXPRESSED STRONG SUPPORT FOR THE LAW OF THE SEA TRIBUNAL AND EXPRESSED SKEPTICISM WITH RESPECT TO OTHER PROCEDURES.

B. CHOICE OF PROCEDURE

THE CONFERENCE WAS DEEPLY SPLIT ON WHICH OF THE POSSIBLE PROCEDURES WAS THE PREFERRED PROCEDURE. ACCORDINGLY, THERE WAS WIDESPREAD RECOGNITION THAT A COMPREHENSIVE SYSTEM ALLOWING EACH PARTY TO ACCEPT THE

COMPULSORY JURISDICTION OF ONE OF A NUMBER OF ALTERNATIVE PROCEDURES IS ESSENTIAL.

NO DELEGATION OPPOSED THE INCLUSION OF THE INTERNATIONAL COURT OF JUSTICE OR ARBITRATION AS ALTERNATIVE PROCEDURES WHOSE JURISDICTION COULD BE ACCEPTED UNDER ARTICLE 9 OF PART IV. FRANCE, THE USSR AND THE UK LED THE EUROPEANS IN OPPOSITION TO THE CREATION OF A LAW OF THE SEA TRIBUNAL, ALTHOUGH FRANCE LATER INDICATED THAT SHE COULD ACCEPT THE CREATION OF A LAW OF THE SEA TRIBUNAL SO LONG AS SHE COULD NOT BE FORCED TO GO TO IT. THE WEST EUROPEANS STRONGLY PREFERRED ARBITRATION, WITH THE UK PROMISING, BUT NEVER PROPOSING, A COMPROMISE SYSTEM OF CONFIDENTIAL

CONFIDENTIAL

PAGE 03 USUN N 03795 09 OF 10 172350Z

QTE INSTITUTIONALIZED ARBITRATION END QTE. TUNISIA, INDIA, ECUADOR, PERU AND INDIA LED THE OPPOSITION TO THE SPECIAL PROCEDURES CONTAINED IN ANNEX II, LARGELY BECAUSE THEY SAW EXPERTS AS DEVELOPED COUNTRY-ORIENTED. MEXICO, ON BEHALF OF THE COASTAL STATES GROUP, RESERVED HERE POSITION ON SPECIAL PROCEDURES PENDING A SATISFACTORY RESOLUTION OF THE QUESTION CONCERNING DISPUTE SETTLEMENT FOR FISHERIES. THE USSR MADE IT CLEAR IT COULD NOT SUPPORT ANY COMPULSORY DISPUTE SETTLEMENT UNLESS THE SPECIAL PROCEDURES ARE INCLUDED.

THESE POSITIONS WERE ALSO REFLECTED IN THE DEBATE ON THE APPROPRIATE PROCEDURE WHERE THE PARTIES TO THE DISPUTE HAD ACCEPTED DIFFERENT PROCEDURES, WITH FRANCE STRONGLY IN SUPPORT OF ARBITRATION BOTH WHERE THE CHOICES DIFFER AND WHERE NO DECLARATION IS MADE AND THE STATE CONCERNED HAS NOT ACCEPTED THE COMPULSORY JURISDICTION OF THE INTERNATIONAL COURT OF JUSTICE. TUNISIA, WITH SUPPORT FROM MANY DEVELOPING COUNTRIES, SOUGHT TO ENSURE THAT NO STATE COULD BE COMPELLED TO SUBMIT A DISPUTE TO THE SPECIAL PROCEDURES, AND INDICATED IT COULD ACCEPT THE RETENTION OF SPECIAL PROCEDURES IF THIS WERE THE CASE.

C. EXCEPTIONS

THE QUESTION OF DISPUTE SETTLEMENT CONCERNING THE EXERCISE OF CERTAIN COASTAL STATE RIGHTS WITH RESPECT TO THE ECONOMIC ZONE WAS THE MOST CONTENTIOUS ISSUE AT THIS SESSION. THE NETHERLANDS GAINED BROAD SUPPORT FOR EXCLUDING SUCH DISPUTES WITH REFERENCE TO THE TERRITORIAL SEA, ECONOMIC ZONE OR CONTINENTAL SHELF RATHER THAN WITH REFERENCE TO THE EXERCISE OF A COASTAL STATE'S SOVEREIGN RIGHTS, EXCLUSIVE RIGHTS OR EXCLUSIVE JURISDICTION. THE EFFORTS OF THE NETHERLANDS, JAPAN, THE USSR AND THE US

TO BROADEN THE EXCEPTIONS TO THE EXCLUSION MET WITH
SUBSTANTIAL RESISTENCE FROM COASTAL STATES, PARTICULARLY
WITH RESPECT TO FISHERIES DISPUTES. MEXICO, ON BEHALF
OF THE GROUP OF COASTAL STATES, URGED THE DELETION OF
COMPULSORY DISPUTE SETTLEMENT WHERE A COASTAL STATE
FAILS TO GIVE DUE REGARD TO ANY SUBSTANTIVE RIGHTS
CONFIDENTIAL

CONFIDENTIAL

PAGE 04 USUN N 03795 09 OF 10 172350Z

SPECIFICALLY ESTABLISHED BY THE CONVENTION IN FAVOR
OF OTHER STATES. ECUADOR, ARGENTINA, CHILE AND URUGUAY
SUGGESTED THAT ONLY NATIONAL COURTS WOULD BE COMPETENT
TO SETTLE DISPUTES ARISING IN THE ECONOMIC ZONE, ALTHOUGH
THEY SUPPORTED EXCEPTIONS RELATING TO THE ENVIRONMENT,
NAVIGATION, OVERFLIGHT, LAYING SUBMARINE CABLES AND
PIPELINES, AND OTHER LEGITIMATE USES OF THE SEA RELATING
TO NAVIGATION AND COMMUNICATIONS.

THE USSR, INDIA, PAKISTAN, VENEZUELA AND TURKEY
INSISTED THAT MARITIME BOUNDARY DISPUTES BE EXCLUDED FROM
ANY COMPULSORY DISPUTE SETTLEMENT PROCEDURES BY AN OPTIONAL
DECLARATION. SPAIN, SWITZERLAND, PERU, SIERRA LEONE,
BAHRAIN, COLOMBIA, KENYA, INDIA AND OMAN OPPOSED AN
OPTIONAL EXCLUSION FOR DISPUTES ARISING FROM MILITARY
ACTIVITIES, WHILE THE US AND THE USSR (THROUGH THE
UKRAINE) SUPPORTED SUCH AN EXCLUSION.

D. ACCESS TO DISPUTE SETTLEMENT PROCEDURES

BAHRAIN, WITH SUPPORT FROM OMAN QATAR, MOROCCO
AND YUGOSLAVIA, PROPOSED THAT ENTITIES THAT WERE OBSERVERS
AT THE THIRD UN CONFERENCE ON THE LAW OF THE SEA
SHOULD BE ENTITLED TO USE DISPUTE SETTLEMENT PROCEDURES,
POINTING IN PARTICULAR TO NATIONAL LIBERATION MOVEMENTS
RECOGNIZED BY THE ARAB LEAGUE OR THE ORGANIZATION OF
AFRICAN UNITY. THE US, WITH SUPPORT FROM THE FRG AND
OTHERS, SUPPORTED ACCESS TO THE DISPUTE SETTLEMENT
PROCEDURES ONLY FOR STATES PARTIES TO THE CONVENTION,
PRIVATE PERSONS WITH RESPECT TO THE RELEASE ON BOND OF
DETAINED VESSELS, AND PRIVATE PERSONS OR THE INTERNATIONAL
SEABED AUTHORITY WITH RESPECT TO DISPUTES ARISING UNDER
PART I OF THE CONVENTION. VENEZUELA, PERU AND OTHERS
SUPPORTED ACCESS ONLY FOR STATES EXCEPT WITH RESPECT TO

CONFIDENTIAL

NNN

CONFIDENTIAL

PAGE 01 USUN N 03795 10 OF 10 172319Z

63

ACTION DLOS-06

INFO OCT-01 IO-13 ISO-00 FEA-01 ACDA-07 AGR-05 AID-05

CEA-01 CEQ-01 CG-00 CIAE-00 CIEP-01 COME-00 DODE-00

DOT-00 EB-07 EPA-01 ERDA-05 FMC-01 TRSE-00 H-02

INR-07 INT-05 JUSE-00 L-03 NSAE-00 NSC-05 NSF-01

OES-06 OMB-01 PA-01 PM-04 PRS-01 SP-02 SS-15 USIA-06

SAL-01 AF-08 ARA-06 EA-07 EUR-12 NEA-10 /158 W

----- 064986

P 172153Z SEP 76

FM USMISSION USUN NY

TO SECSTATE WASHDC PRIORITY 9241

C O N F I D E N T I A L SECTION 10 OF 10 USUN 3795

DISPUTES ARISING UNDER PART I.

E. FINAL CLAUSES

EFFORTS WERE MADE BY SOME DELEGATIONS, NOTABLY CHILE, TO HAVE A GENERAL DEBATE ON THE RECORD ON THE PREAMBLE AND FINAL CLAUSES. THE US RECEIVED INFORMATION THAT PROPOSALS WOULD BE MADE TO AUTHORIZE NATIONAL LIBERATION MOVEMENTS, PUERTO RICO, MICRONESIA AND THE EEC TO BECOME PARTIES TO THE NEW CONVENTION, AND LOBBIED EXTENSIVELY BEHIND THE SCENES TO DEFER THE DEBATE. THE REVIEW OF DISPUTE SETTLEMENT LEFT INSUFFICIENT TIME TO TAKE UP THE PREAMBLE AND FINAL CLAUSES AND THE QUESTION WAS DEFERRED UNTIL THE NEXT SESSION. DURING THE DEBATE ON ACCESS FOR ENTITIES OTHER THAN STATES TO THE LAW OF THE SEA TRIBUNAL, BAHRAIN SUGGESTED THAT NATIONAL LIBERATION MOVEMENTS RECOGNIZED BY THE ARAB LEAGUE OR THE ORGANIZATION OF AFRICAN UNITY SHOULD BE ABLE TO BECOME CONTRACTING PARTIES TO THE NEW CONVENTION.

CONFIDENTIAL

CONFIDENTIAL

PAGE 02 USUN N 03795 10 OF 10 172319Z

PRESS COVERAGE: PRESS COVERAGE OF THIS SESSION OF THE CONFERENCE WAS MUCH GREATER THAN ON PREVIOUS SESSIONS

IN PART DUE TO THE PARTICIPATION OF THE SECRETARY AND IN PART DUE TO THE PRECEPTION THAT THE CONFERENCE WAS ENTERING A CRITICAL IF NOT FINAL PHASE.

THE GENERAL TONE OF EDITORIAL COMMENT ACROSS THE COUNTRY WAS FAVORABLE TO THE GOALS OF THE CONFERENCE AND TO THEIR IMPORTANCE, MIXED WITH DOUBTS AS TO THE POSSIBILITY OF ATTAINING AGREEMENT IN THE PRESENT CLIMATE. PRIOR TO THE SECRETARY'S VISIT THERE WAS SPECULATION ON A DEADLOCK OR FAILURE WITH CRITICISM LEVELLED VARIOUSLY AT THE IDEOLOGICAL STANCE OF THE GROUP OF 77 AND LESS POINTEDLY AT THE RIGIDITY OF US POSITIONS. AN EXCEPTION TO THE GENERAL EDITORIAL SUPPORT OF THE CONFERENCE WAS THE WALL STREET JOURNAL WHICH CONTINUES CRITICAL OF EFFORTS TO CREATE A DEEP SEABED MINING REGIME, OR ANY LOS AGREEMENT.

SOME EDITORIAL SPECULATION EMERGED ON THE POSSIBILITY OF DEFERRING AGREEMENT ON SEABED MINING, AND CONCENTRATING ON MORE IMMEDIATE ISSUES WHICH SEEM MORE SUSCEPTIBLE OF AGREEMENT.

ALL THREE TV NETWORKS FOR THE FIRST TIME HAVE TAKEN AN ACTIVE INTEREST. BOTH CBS AND NBC COVERED THE OPENING OF THE CONFERENCE AND THE SECRETARY'S VISIT AND ALL THREE ARE PLANNING CLOSING COMMENTARY.

EDITORIAL COMMENT HOWEVER, HAS BEEN LARGELY CONFIRMED TO WHAT MIGHT BE CALLED THE NATIONAL PRESS..THE NEW YORK TIMES, THE WASHINGTONPOST, THE LOS ANGELES TIMES, THE BALTIMORE SUN, THE CHRISTIAN SCIENCE MONITOR, WITH LIMITED ATTENTION FROM MORE LOCALIZED PAPERS. TIME MAGAZINE FOR THE THIRD STRAIGHT SESSION HAS PREPARED AN EXTENSIVE STORY BUT PREVIOUS VERSIONS HAVE NOT SURVIVED THE GENERAL EDITORS. HOWEVER, NETWORK TV ATTENTION MAY IMPROVE THE POSSIBILITY OF COVERAGE IN GENERAL CIRCULATION PUBLICATIONS. MEANWHILE SPECIAL INTEREST PUBLICATION (FISHING, OIL, ENVIRONMENTAL, ETC.) CONTINUE TO FOCUS ON THEIR PARTICULAR AREAS OF INTEREST.

CONFIDENTIAL

CONFIDENTIAL

PAGE 03 USUN N 03795 10 OF 10 172319Z

CONGRESSIONAL PARTICIPATION: CONGRESSIONAL INTEREST REMAINS, WITH A FEW EXCEPTIONS, CENTERED ON SPECIFIC ISSUES; E.G. FISHING AND DEEP SEA MINING. THE COMBINATION OF SUMMER RECESS AND AN ELECTION YEAR RESULTED IN FEW CONGRESSIONAL VISITS HOWEVER, A NUMBER OF CONGRESSIONAL STAFF FROM INTERESTED COMMITTEES ATTENDED PART OF THE SESSION. RELATIVELY FEW MEMBERS OF BOTH HOUSES HAVE MAINTAINED AN ACTIVE INTEREST IN LOS ISSUES GENERALLY.

ON THE OTHER HAND IT IS EVIDENT THAT AS THE CONFERENCE APPROACHES ITS CRITICAL STAGES MORE GENERAL CONGRESSIONAL INTERESTS WILL BE MANIFESTED.

VISIT OF SECRETARY KISSINGER: THE SUBSTANTIVE ASPECTS OF THE SECRETARY'S VISIT ARE COVERED IN COMITE REPORTS. WITH RESPECT TO PRESS AND CONGRESSIONAL ATTITUDES, THE SECRETARY'S PARTICIPATION IN THE CONFERENCE CLEARLY BROADENED THE LEVEL OF INTEREST IN THE PRESS WHICH HAD THE USEFUL LONG TERM RESULT OF EDUCATING MORE AND DIFFERENT MEDIA ON THE NATURE OF THE ISSUES INVOLVED, AND IN STIMULATING INTEREST IN THE OUTCOME OF THE SESSION. MORE IMPORTANTLY IT FRAMED SPECIFIC INTERESTS IN THE CONTEXT OF BROAD FOREIGN POLICY CONCERNS, OF A MAGNITUDE SUFFICIENT TO INVOLVE THE SECRETARY'S PERSONAL PARTICIPATION. THIS WILL BE HELPFUL TO MANY US ORGANIZATIONS LIKE UNA WHICH HAVE BEEN RUNNING EXTENSIVE EDUCATIONAL PROGRAMS ON LAW OF THE SEA ISSUES WITHOUT THE CACHET OF THEIR IMPORTANCE THAT THE SECRETARY'S INVOLVEMENT CONFERS. IN THE LONG RUN THIS WILL BE HELPFUL TO THE MOST DIFFICULT LOS PUBLIC RELATIONS PROBLEM: THE INTENSIVE INTEREST OF SPECIAL INTEREST GROUPS ON PARTICULAR ISSUES, AND THE RELATIVE LACK OF GENERAL INTEREST AND CONCERN ABOUT THE BROADER RAMIFICATIONS OF OCEANS POLICY.

THE SECRETARY'S PARTICIPATION WAS WELCOMED BY SUPPORTERS OF LOS IN THE CONGRESS WHO HAVE URGED SUCH A VISIBLE MANIFESTATION OF HIGH LEVEL IMPORTANCE.

SCRANTON

CONFIDENTIAL

NNN

Message Attributes

Automatic Decaptioning: X
Capture Date: 01 JAN 1994
Channel Indicators: n/a
Current Classification: UNCLASSIFIED
Concepts: LAW OF THE SEA, REPORTS, MEETINGS, NEGOTIATIONS
Control Number: n/a
Copy: SINGLE
Draft Date: 17 SEP 1976
Decaption Date: 01 JAN 1960
Decaption Note:
Disposition Action: RELEASED
Disposition Approved on Date:
Disposition Authority: coburnhl
Disposition Case Number: n/a
Disposition Comment: 25 YEAR REVIEW
Disposition Date: 28 MAY 2004
Disposition Event:
Disposition History: n/a
Disposition Reason:
Disposition Remarks:
Document Number: 1976USUNN03795
Document Source: CORE
Document Unique ID: 00
Drafter: n/a
Enclosure: n/a
Executive Order: GS
Errors: N/A
Film Number: D760352-0357
From: USUN NEW YORK
Handling Restrictions: n/a
Image Path:
ISecure: 1
Legacy Key: link1976/newtext/t19760946/aaaabnfq.tel
Line Count: 1819
Locator: TEXT ON-LINE, ON MICROFILM
Office: ACTION DLOS
Original Classification: CONFIDENTIAL
Original Handling Restrictions: n/a
Original Previous Classification: n/a
Original Previous Handling Restrictions: n/a
Page Count: 34
Previous Channel Indicators: n/a
Previous Classification: CONFIDENTIAL
Previous Handling Restrictions: n/a
Reference: n/a
Review Action: RELEASED, APPROVED
Review Authority: coburnhl
Review Comment: n/a
Review Content Flags:
Review Date: 19 MAY 2004
Review Event:
Review Exemptions: n/a
Review History: RELEASED <19 MAY 2004 by woolflhd>; APPROVED <15 SEP 2004 by coburnhl>
Review Markings:

Margaret P. Grafeld
Declassified/Released
US Department of State
EO Systematic Review
04 MAY 2006

Review Media Identifier:
Review Referrals: n/a
Review Release Date: n/a
Review Release Event: n/a
Review Transfer Date:
Review Withdrawn Fields: n/a
Secure: OPEN
Status: NATIVE
Subject: AUGUST - SEPTEMBER 1976 - LOS CONFERENCE - CLASSIFIED REPORT BEGIN SUMMARY
TAGS: PLOS, LOS
To: STATE
Type: TE
Markings: Margaret P. Grafeld Declassified/Released US Department of State EO Systematic Review 04 MAY 2006